(22,840 and 22,841.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 764.

WILLIAM M. BARRETT, AS PRESIDENT OF THE ADAMS EXPRESS COMPANY, &c, APPELLANT,

vs.

THE CITY OF NEW YORK, ET AL.

No. 765.

THE CITY OF NEW YORK, ET AL., APPELLANTS,

vs.

WILLIAM M. BARRETT, AS PRESIDENT OF THE ADAMS EXPRESS COMPANY, &c.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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United States Circuit Court, 1

SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

WILLIAM M. BARRETT, as President of the Adams Express Company, individually and as a shareholder in the said Company, suing on behalf of himself and all other members and shareholders of the said Company, 2
Complainant,

vs.

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of The City of New York, and JAMES C. CROPSEY, as Police Commissioner of The City of New York,
Defendants.

Amended Bill of Complaint.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK, SITTING IN EQUITY: 3

William M. Barrett, of the City of New York, in the State of New York, and a citizen of the United States and of the State of New York, as President of the Adams Express Company, an unincorporated association composed of more than

seven persons organized and existing under the laws of the State of New York, having its principal office in the said City, and the said William M. Barrett, individually and as a holder of shares and member of the said Adams Express Company, on behalf of himself and all other members and holders of shares of said Company, brings this, his amended bill of complaint, against The City of New York, a corporation of the State of New York, William J. Gaynor, as Mayor of The City of New York, and James C. Cropsey, as Police Commissioner of the said The City of New York, and thereupon your orator complains and says:

I. This is a suit of a civil nature arising under the Constitution and laws of the United States, and the amount in controversy exceeds the sum or value of two thousand dollars ($2,000), exclusive of costs or interest.

II. The Adams Express Company is an unincorporated association consisting of more than seven persons, organized and existing under and by virtue of the laws of the State of New York, and your orator is a shareholder and the President thereof. By section 1919 of the Code of Civil Procedure adopted by the Legislature of the State of New York, the said Express Company is authorized to maintain and bring suits in the name of its President upon any cause of action for or upon which all the associates may maintain such an action by reason of their interest or ownership therein, either jointly or in common. The Adams Express Company is composed of a large number of members or holders of shares or interests in the said Company, and all or nearly all of said members or holders are citizens of the United States and all have a joint ownership or interest in the subject of this suit, but they are too numerous to be joined as parties hereto, and it is impracticable, if not impossible, to bring

them and each of them before this court to join in this, your said orator's amended bill of complaint, because they are widely scattered and live in many parts of the United States, and some of them are absent from the United States. Your petitioner, therefore, as such President and member and shareholder of the said Adams Express Company, brings this suit on behalf of the said Company and on his own behalf and on behalf of all other members and shareholders of the said Company. 7

III. The defendant, The City of New York, is a municipal corporation of the State of New York, and the defendant, William J. Gaynor, is the Mayor thereof, and the defendant, James C. Cropsey, is Police Commissioner thereof; and the said William J. Gaynor, as Mayor, and James C. Cropsey, as Police Commissioner, are charged by the laws of said State, in such cases made and provided, with the enforcement of the ordinances of the said corporation, The City of New York, and are engaged in so enforcing the same. 8

IV. The Adams Express Company is now, and since its organization in the year 1854 has been, engaged in the City of New York and elsewhere in the business of interstate express as a common carrier of packages, parcels and other property between the several States under through bills of lading and at through rates. Said express business, by the necessities of commerce and the usages of those engaged in such transportation, has become known and recognized as distinct from the transportation of the large mass of freight usually carried by steamboats and railroads, and its object is to carry small and valuable packages rapidly and in such a manner as not to subject them to the risk of loss, damage or delay which would attend their transportation in company with heavy or bulky articles of commerce. The said Adams 9

10 Express Company, in the conduct of its business, receives directly from shippers daily in the City of New York many thousands of small and separate packages for carriage and delivery to consignees at points and places in other States, and receives daily in other States many thousands of like packages for delivery to consignees in the City of New York, which packages contain merchandise, money, gold and silver bullion, jewels, deeds and other documents and papers, securities and other articles of great value, and also fruits, vegetables and other perishable articles, all of which require special care in transit in the charge of
11 responsible agents and certainty and promptness of delivery. The number of interstate packages which the Adams Express Company carries to and from the City of New York averages more than seventy-five thousand daily. The said transportation of packages in interstate commerce to and from the City of New York is done by the Adams Express Company under the terms and conditions of a through bill of lading, which it duly issues in each case as the contract of carriage, and at a through rate covering all services from the moment of receipt until the moment of actual delivery to the consignee, including cartage
12 in The City of New York. It also carries bonds, money, and gold and silver bullion for the Government of the United States between New York and Washington, D. C. It transports all packages delivered to it by shippers in the custody of its own employees and agents, by its own wagons or in special railroad cars, and over railroads and by steamboats or other means of carriage specially provided by it, which instrumentalities form through routes for continuous transportation between the several States from shipper to consignee, and it delivers such packages directly to the consignees at their residences, places of business or

other designated addresses, or to connecting lines 13
in case the consignees are beyond points reached by its own lines. Liability for loss, damage, or injury to property delivered to and accepted by the said Company for interstate transportation, for which it has issued its bill of lading, is imposed by law upon it, whether such loss, damage or injury is caused by the Company during any part of the transportation or by any other carrier to which such property has been transferred for delivery.

V. The said Adams Express Company, as a common carrier, is subject to the provisions of the Act of Congress, approved February 4, 1887, en- 14
titled "An Act to regulate commerce," and the various acts amendatory thereof and supplemental thereto. By the said acts of Congress the Company is, among other things, charged with the duty of providing and furnishing vehicles and all instrumentalities and facilities for the receipt, shipment, transportation or delivery of property upon reasonable request therefor, and of establishing through routes and just and reasonable rates applicable thereto, and of filing with the Interstate Commerce Commission and publishing shedules of rates, which are subject to the approval and regulation of the said Commission. The said Express 15
Company carries on its interstate business in the United States on the lines of more than one hundred separate railroad companies, besides steamboat and stage lines; its interstate routes aggregate more than thirty-six thousand miles in length, and they extend into thirty States and the District of Columbia; it has established over the said lines through routes, and has made and filed with the Interstate Commerce Commission, and duly published, as required by law, classifications and schedules of rates applicable thereto, by which all of its interstate business is governed, and it has

duly complied with all the requirements of the Interstate Commerce Act.

VI. The said Express Company is the owner of a large number of horses and wagons and other vehicles kept and used by it in the many places in which it transacts its business. In the City of New York the said Company employs about two thousand men, and owns and uses about four hundred and fifty wagons drawn by horses, requiring the services of over four hundred drivers, besides about ninety motor vehicles, and all of these wagons and drivers are used and engaged in the interstate business of receiving, transporting and delivering packages and articles shipped to or from or through other States. The said horses, wagons and other vehicles and the drivers thereof are necessary and indispensable instrumentalities of the Company in the transaction of its said interstate business, and without such horses, wagons and vehicles, and without drivers and other operators for the same, the transaction of the interstate business of the Company in the City of New York and other large cities would be impossible. The services rendered by said wagons and drivers in collecting and delivering packages in the City of New York are invariably part of the interstate transportation and no separate charge is made therefor, but such services are included and absorbed in and covered by the through rate or charge aforesaid so duly made, filed and published in accordance with said Interstate Commerce Law.

VII. The Board of Aldermen of the City of New York, claiming to act under and by virtue of power conferred upon them by an act of the Legislature of the State of New York known as The Greater New York Charter, and particularly section 51 thereof, heretofore adopted a Code of Ordinances for the City of New York, and in and by chapter

7 thereof, among other things, provided as follows:

"Section 305. The following businesses must be duly licensed as herein provided, namely, public cartmen, truck men, hack men, cab men, express men, drivers, junk dealers, dealers in second hand articles, hawkers, peddlers, venders, ticket speculators, coal scalpers, common shows, shooting galleries, bowling alleys, billiard tables, dirt carts, exterior hoists and stands within stoop lines and under the stairs of the elevated railroad stations."

"Section 306. No person shall engage in or carry on any such business without a license therefor under a penalty of not less than two dollars, nor more than twenty-five dollars for each offense, and for the purposes of this ordinance the term person shall include any human being or lawful association of such."

"Section 307. All licenses shall be granted by authority of the Mayor and issued by the Bureau of Licenses for a term of one year from the date thereof, unless sooner suspended or revoked by the Mayor, and no person shall be licensed except a citizen of the United States or one who has regularly declared intention to become a citizen.

"The Mayor shall have power to suspend or revoke any license or permit issued under the provisions of this ordinance. The Mayor shall also have power to impose a fine of not more than five dollars or less than one dollar for any violation of the regulations herein provided, and to suspend the license pending payment of such fine, which, when collected, shall be paid into the sinking fund for the redemption of the city debt."

22 "Section 308. The annual license fee shall be as below enumerated: . . .
For each express wagon.....$5."

"Section 315. Every person driving a licensed hack, or express, shall be licensed as such driver, and every application for such license shall be indorsed, in writing, by two reputable residents of The City of New York testifying to the competence of the applicant. No owner of a licensed hack or express shall employ an unlicensed driver under a penalty of ten dollars for each and every offence."

"Section 330. Every vehicle of whatever
23 construction, kept or used for the conveyance of baggage, packages, parcels and other articles within or through The City of New York for pay, shall be deemed a public express, and the owner therof shall be deemed a public expressman, and the term expressman shall be deemed to include any common carrier of baggage, packages, parcels or other articles within or through The City of New York."

"Section 331. Every public express shall show on each outside thereof the word 'Express,' or the letters 'Exp.,' together with the
24 figures of its official number."

"Section 332. Every owner of a public express shall give a bond to The City of New York for each and every vehicle licensed in a penal sum of $100, with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express."

"Section 333. The legal rates for regular

deliveries, unless otherwise mutually agreed, shall be as follows in the city: 25

Between points within any borough—

Not more than five miles apart, each piece	$0.40
Not more than ten miles apart, each piece	55
Not more than fifteen miles apart, each piece	75

Between points in different boroughs: half the above rates in addition.

Special deliveries at rates to be mutually agreed upon."

"Section 373. All license fees received by the Bureau of Licenses shall be regularly paid over to the City Treasury, except the license fees received from hackmen, dealers in junk and second-hand articles, and for stands within stoop-lines, which shall be paid into the Sinking Funds for the Redemption of the City Debt." 26

"Section 374. The Mayor shall have power to appoint inspectors in the Bureau of Licenses to see that the provisions of this ordinance are fully and properly complied with; and all licensed vehicles and places of business shall be regularly inspected, and the result of such inspection shall be endorsed on the official license therefor, together with the date of inspection and the signature of the inspector, and all inspections shall be regularly reported to the Bureau of Licenses." 27

"Section 375. Every licensee shall have the official license and exhibit the same upon the demand of any person; and shall report within three days to the Bureau of Licenses any change of residence or place of business; and shall at all times perform the public duties

of the business licensed when called upon so to do, if not actually unable."

"Section 379. Except as hereinbefore otherwise provided, no person shall violate any of the regulations of this ordinance under a penalty of ten dollars for each offense. No such violation shall be continued under a penalty of ten dollars, for each day so continued. Any person engaging in or carrying on any business herein regulated without a license therefor, or any person violating any of the regulations of this ordinance, upon conviction thereof by any Magistrate, either upon confession of the party or competent testimony, may be fined not more than ten dollars for each offense, and in default of payment of such fine may be committed to prison by such Magistrate until the same be paid; but such imprisonment shall not exceed ten days."

The Code of Ordinances containing the above was adopted by the Board of Aldermen October 30, 1906, and approved by the Mayor, November 8, 1906, and as so approved the said ordinances are still in full force and effect, except that by ordinance adopted June 15, 1909, and approved by the Mayor June 29, 1909, sections 315 and 379 were amended to read as above recited.

As will further appear by reference to the Code of Ordinances so adopted by the Board of Aldermen of The City of New York and particularly chapter 12, sections 435 to 475, inclusive, other ordinances have been adopted under and by virtue of section 50 of the Greater New York Charter for the purpose of regulating the use of the streets of the City by wagons and vehicles. Such ordinances regulate the use of the streets and the character and speed of vehicles, but none of such ordinances requires

any licenses or the payment of license fees by those 31
using the streets, and all of said ordinances are general and apply to every wagon which is or may be used for or adapted to the transportation of baggage or merchandise upon the streets of the City, and said ordinances so regulating the use of the streets apply impartially and without discrimination to every business conducted in the City.

There are many thousands of wagons and vehicles employed in other businesses than express which use the streets of the City in the same manner as the wagons and vehicles of the Adams Express Company and other similar express companies, but which other wagons and vehicles and the drivers 32
thereof are not required to be licensed. The number of vehicles belonging to interstate express companies and engaged in interstate transportation constitutes a small percentage of the total number of wagons or vehicles using the streets in The City, and the greater part of these other wagons and vehicles and their drivers are not licensed nor are the businesses in which they are used licensed nor are they subjected to the payment of any license fees.

VIII. In the conduct of the interstate business of the Adams Express Company in the City of New York, all shipments between the said City and 33
points north, south and west thereof, are made by the said Company by way of Jersey City in the State of New Jersey over interstate railroads running through the State of New Jersey and other States, and are transported by the said Company in the immediate custody of its own agents or employees in railroad cars engaged in interstate commerce and specially provided for that purpose. All such shipments are necessarily transported in the said wagons or other vehicles by ferry between the cities of New York and Jersey City, and are then and there transferred in transit at Jersey City from

or to said railroad cars and the wagons or other vehicles of the said Express Company. All of said shipments addressed to consignees in the City of New York south of Fifty-ninth Street are delivered directly to the consignees in such wagons or vehicles without further transfer, and without being mingled with any articles transported wholly within the City or State of New York. Shipments to consignees north of Fifty-ninth Street are transferred in transit to other wagons or vehicles of the Company for delivery, or to connecting lines for points in the northerly part of said City beyond the delivery routes of the Company. All interstate shipments from the City of New York to points reached by way of Jersey City, as aforesaid, are collected in said wagons or other vehicles of the Company and transported to the nearest district offices of the Company in the said City of New York, and are there transferred in transit to wagons or other vehicles of the Company and transported therein by ferry to Jersey City, and thence in special railroad cars are carried by the Company to their respective places of destinations in the immediate custody of the agents or messengers of the Company, as aforesaid. The wagons and other vehicles of the Adams Express Company engaged in the said traffic between New York and New Jersey, when not actually in use, are kept in the stables of the Company in Jersey City.

All interstate shipments between the City of New York and points east thereof are made by the Company by way of the New York, New Haven & Hartford Railroad, an interstate railroad, running through the States of New York, Connecticut, Rhode Island and Massachusetts, in the immediate custody of agents or messengers of the said Express Company, and in railroad cars engaged in interstate traffic and specially provided for that

purpose. All such easterly interstate shipments 37
are necessarily transferred in transit at the terminus of the said railroad in the City of New York from and to the said cars and wagons or other vehicles of the Express Company, and all of such shipments addressed to consignees in the City of New York south of Fifty-ninth Street are delivered without further transfer. Shipments addressed to consignees north of Fifty-ninth Street are transferred in transit to other wagons or vehicles of the Company for delivery, or to connecting lines for points in the northerly part of said city beyond the delivery routes of the Company. All shipments from the City of New York to points reached 38
by the said New York, New Haven & Hartford Railroad are collected in wagons or other vehicles of the Express Company and transferred to the nearest district office of the Company in the said City, and are there transferred in transit to wagons or other vehicles of the Company and transported to the terminus of the said railroad in said City, and thence are carried by the Company in special railroad cars to their respective places of destination in the custody of the agents or employees of the Company, as aforesaid. All packages transported by the Company between the said City of New York 39
and points in other States are carried by it on through bills of lading and at single and indivisible through rates established by it, according to the schedules filed by it with the Interstate Commerce Commission and published, as required by law, and said bills of lading are executed by its said drivers or agents on its behalf, being thereunto duly authorized. The transfers in transit from and to railroad cars, wagons and other means of transportation as aforesaid, are necessary and unavoidable in the transportation and delivery of interstate packages by the Express Company, and no separate

40 charge is made for such transfers in transit or for the service of the said wagons or other vehicles in carrying such packages within or through the City of New York. The collection, transfer and delivery by means of the several vehicles, as aforesaid, taken together constitute through routes for continuous interstate transportation at single indivisible through rates on through bills of lading.

For the convenience of its interstate customers and as auxiliary to its business of interstate transportation, the Adams Express Company receives packages for transportation wholly within the City of New York, or between the said City and points
41 on the said New York, New Haven & Hartford Railroad in the State of New York. It is impossible to segregate such domestic transportation from the aforesaid interstate transportation as conducted by the company, and such domestic shipments are received and carried in the vehicles of the Company which are engaged in interstate transportation. The whole number of domestic or intrastate packages so carried by the said Company in the City of New York daily is less than one per cent. of its interstate traffic, and the carrying of such domestic shipments, separate and apart from the said interstate business, would be neither practicable nor profitable to Company.

42 Although the Adams Express Company has been employing drivers and using wagons in the streets of the City of New York in the course of the conduct by it of its interstate business during all the period hereinabove alleged, that is, for over fifty years, it has never been compelled by any city officials acting under any statute, ordinance or otherwise, to take out a license or licenses for the conduct of its interstate business, or to employ only licensed drivers for its wagons and vehicles employed in interstate commerce, or to conform to any tariff of charges or rates prescribed by any

state statute or municipal ordinance, and its 43
wagons and drivers employed by it and engaged in its interstate business have never been licensed in the City of New York. For several years last past, the Adams Express Company, under and by virtue of an arrangement made by it with the Bureau of Licenses of the City of New York, has taken out licenses for wagons and drivers to the amount of about forty per annum and paid license fees thereon, and such number was agreed upon with said Bureau of Licenses as representing the domestic business actually done within said City and not its interstate business, and the company has at all times conformed to the ordinances of the City of 44
New York in respect of its domestic business, notwithstanding the fact that such domestic business was conducted by it as an inseparable part and auxiliary of its interstate business.

At no time prior to the dates and occurrences hereinafter alleged has any claim or demand been made on behalf of the City of New York that the Adams Express Company and other similar interstate carriers could be compelled to take out licenses for the conduct of their interstate express business or the use of their wagons or drivers engaged in such interstate business or to pay license fees. Nor has it been heretofore claimed or asserted 45
by any officials of the City charged with the enforcement of the ordinances of the Board of Aldermen that said Adams Express Company and other similar companies engaged in interstate transportation were required to take out licenses or to pay license fees, as aforesaid, until the claim, demand and threats hereinafter alleged.

In the year 1902, as your orator is informed and believes, and therefore alleges, the question of the power of the Board of Aldermen of The City of New York to compel express companies engaged in interstate commerce to take out licenses for

46 themselves or their drivers was submitted to the Corporation Counsel of the City, by the Chief of the Bureau of Licenses, and the Corporation Counsel, Mr. George L. Rives, rendered an opinion, in which, among other things, he stated, as follows:

> "It seems to me that the imposition of a license fee and the prescription of rates, as far as they apply to an expressman, who transports packages or other articles from Jersey City, or from any other point without the State, to the City, or through the City, would be an attempt to regulate interstate commerce and would, therefore, be unauthor-
47 ized. It has been decided by the Supreme Court of the United States and by the Court of Appeals of this State, that in the case of interstate transportation the Legislature cannot prescribe the charge to be made for even that part of the transportation which is to be performed within the State, (*Wabash R. R. Co.* v. *Ill.*, 118 U. S., 557; *Peo. ex rel. Pa. R. R. Co.* v. *Knight*, 171 N. Y., 357)."

The officials of The City of New York thereafter acquiesced in said opinion of the Corporation Counsel, and until the dates and occurrences hereinafter averred, made no demand that the Adams Express
48 Company or other similar interstate carriers or their drivers should be licensed.

IX. On or about the 27th day of October, 1910, a large number of drivers, wagon helpers and other employees of the said Adams Express Company engaged in receiving, delivering and handling packages in the City of New York, left its service without notice and without having made any demand upon the Company of any kind whatever, and continued to absent themselves from its service, having been induced thereto, as your orator is informed and verily believes, by the interference of other persons not employed by or in the service

of the Company, by threats and violent means of intimidation and by their inability to secure due police protection. For the transaction of its interstate business it, thereupon, became necessary for the Company to employ and seek to employ new drivers for its wagons. In like manner, drivers and other employees of other express companies in the City of New York engaged in interstate commerce left the service of such companies and continued to absent themselves from such service, and it became necessary for such other companies to employ and seek to employ new drivers for their wagons. The new drivers and other employees of the Adams Express Company at work upon its wagons engaged solely in interstate traffic in the City of New York have been violently assaulted by riotous mobs, and the said wagons in some cases have been greatly damaged, so that for several weeks the interstate business of the said Company was seriously interrupted and could not be carried on without the protection of the police of the City of New York.

X. Your orator further alleges on information and belief that the defendants, William J. Gaynor, as Mayor, and James C. Cropsey, as Police Commissioner, of The City of New York, have caused the arrest in the Borough of Manhattan, in the City of New York, of an unlicensed driver of the Adams Express Company engaged in driving a wagon of the said Company used only in interstate transportation, namely, in carrying merchandise in transit from Jersey City, New Jersey, by way of steamboat to Brooklyn and thence by wagon to the consignee in the Borough of Manhattan in the said city, on through bills of lading; that at the time of said arrest, the said wagon was conspicuously marked with placards containing the following words, to wit: "This wagon carries interstate commerce traffic only"; that the said defendants, the

52 Mayor and Police Commissioner aforesaid, have threatened to arrest other unlicensed drivers of the said Adams Express Company driving its wagons engaged in interstate traffic and to enforce said ordinances above set forth against the Company and all its drivers; that they have caused the seizure and impounding of wagons of the said Company engaged in interstate traffic on the ground that the same were not licensed according to the ordinances above quoted, and have seized and impounded their contents, being interstate shipments, and that they have threatened to seize and impound other wagons, claiming that such unlicensed employees
53 in driving the said wagons violate the said ordinances, and that the said unlicensed wagons are used in violation of the said ordinances, notwithstanding that such employees and the wagons driven by them are engaged in interstate transportation.

Your orator further alleges that such arrests of drivers of the said Adams Express Company, as made and threatened, and the seizure and impounding of its wagons engaged in interstate traffic, will wholly prevent it from carrying on its interstate business and from performing its duty as a common carrier as required by the said Acts of Con-
54 gress, and that such acts are and such threatened acts would be an unlawful interference with the business and property of the Company as a common carrier engaged in interstate commerce, and will and would inflict irreparable injury upon it to an extent which it will be impossible to accurately estimate or ascertain.

Your orator further alleges that the value of its said business in the City of New York is more than the sum of ten thousand dollars per day; that the injury to which the said Adams Express Company will be subjected by such threatened arrests and the consequent interference with its business will

be more than ten thousand dollars per day in loss 55
of charges on interstate shipments, and that all of the above alleged acts and doings of the defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of the Company and of your orator in the premises, and the Company and your orator are without any sufficient or adequate remedy at law in the matters aforesaid.

Forasmuch, therefore, as your orator is without remedy in the premises, except in a court of equity, and to the end that the said defendants named, and each and every of them may full, true and perfect answer make to this your orator's amended bill 56
of complaint, but not under oath, the answer under oath of each and every of them being hereby expressly waived, and that the said defendants and each of them, their agents, servants, officers and subordinates, and each and every of them, be restrained and enjoined from enforcing the said ordinances against the said Adams Express Company, its wagons, drivers and employees, and demanding licenses therefor, and from arresting its drivers or causing them to be arrested, and from denying police protection to the drivers and wagons of the Company for not complying with the said ordinances, and from otherwise interfering with the 57
said Adams Express Company, its wagons, drivers and employees engaged in interstate transportation, and that your orator may have such other and further relief as shall be just:

May it please your Honors to grant to your orator an interlocutory injunction pending the final hearing of this cause, whereby the said defendants, their agents, servants, officers and subordinates, and each and every of them, may thereby be ordered and commanded to refrain, and be thereby restrained and enjoined as hereinbefore prayed, and

58 that upon final hearing the said injunction be made perpetual.

May it please your Honors to grant to your orator a writ of subpœna of the United States of America, directed to the said defendants and each of them, commanding them on a day certain to appear and answer unto this amended bill of complaint and to abide by and perform such order and decree in the premises as to the court shall seem proper.

And your orator will ever pray, etc.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for the Complainant,
59 44 Wall Street,
New York City.

WILLIAM D. GUTHRIE,
FRANCIS S. BANGS,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

On this 30th day of November, 1910, before me personally appeared William M. Barrett, the complainant above named, who, being by me duly sworn, says that he has read the foregoing amended bill of complaint and knows the contents thereof,
60 and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

(Sgd.) WILLIAM M. BARRETT.

Subscribed and sworn to before me this 30th day of November, 1910.

THOMAS C. CURTIS, Jr.,
[SEAL.] Notary Public,
New York County, N. Y.

CIRCUIT COURT OF THE UNITED STATES, 61
FOR THE SOUTHERN DISTRICT OF NEW YORK.

WILLIAM M. BARRETT, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company, Complainant, vs. THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and JAMES C. CROPSEY, as Police Commissioner of the City of New York, Defendants.	Answer to Amended Bill of Complaint. 62

The joint and several answers of the defendants herein, The City of New York, William J. Gaynor, as Mayor of the City of New York, and James C. Cropsey, as Police Commissioner of the said City of New York, to the amended bill of complaint herein: 63

The above-named defendants now and at all times hereafter saving and reserving unto themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many uncertainties and insufficiencies in the said amended bill of complaint contained, for answer thereto or unto so much and such parts thereof as they are advised is or are material or necessary for them to make answer unto, answering say:

64 FIRST. Defendants admit the allegations contained in paragraphs numbered I, II and III of said amended bill of complaint herein.

SECOND. Defendants do not know and are not informed save by said amended bill of complaint, as to the truth of any of the matters or things alleged in paragraph numbered IV of said amended bill of complaint herein and pray that if the same are material complainant may be required to make full proof thereof, except that defendants admit and allege that said Adams Express Company is now and for many years has been engaged in the express business in the city of New York and that
65 in the conduct of its said business it receives directly from shippers daily in the city of New York many thousands of packages for carriage and delivery to consignees at various points both in the state of New York and in other states and likewise receives daily at various places many thousands of packages for delivery to consignees in the city of New York.

THIRD. Defendants do not know and are not informed, save by said amended bill of complaint herein, as to the truth of any matter alleged in paragraph numbered V of said amended bill of complaint herein and pray that complainant may be required to make full proof thereof if the same
66 is material.

FOURTH. Defendants admit and allege that said Adams Express Company employs and uses in the City of New York about four hundred and fifty (450) wagons drawn by horses and employs in connection therewith over four hundred (400) drivers and that such wagons and drivers are necessary instrumentalities in the transaction of complainant's express business in the city of New York, as alleged in paragraph numbered VI of said amended bill of complaint herein, but defendants do not know and are not informed, save by said

amended bill of complaint herein as to the truth 67
of any other matter or thing alleged in said paragraph numbered VI of said amended bill of complaint and pray that complainant may be required to make full proof thereof if the same is deemed material.

FIFTH. Defendants admit that the Board of Aldermen of the City of New York heretofore adopted a code of ordinances for the City of New York as alleged in Paragraph VII of said amended bill of complaint herein, and that said code of ordinances, among other things, provided as stated in said amended bill of complaint herein, Paragraph VII thereof. But said provisions, as set forth in said 68
amended bill of complaint herein, are not a full and complete statement of all of the provisions of said code of ordinances, a full, true and complete statement whereof will be found in the 1910 edition of Cosby's Code of Ordinances to which reference is made for greater certainty. Save as herein admitted, defendants have no knowledge of any of the other matters or things alleged in said paragraph numbered VII of said amended bill of complaint, and pray that complainant may be required to make full proof thereof, if the same is deemed material.

SIXTH. Defendants have no knowledge and are not informed, save by said amended bill of com- 69
plaint herein, as to the truth of any of the matters alleged in paragraph numbered VIII in said amended bill of complaint herein, and pray that complainant may be required to make full proof thereof, if the same is deemed material, except that defendants admit and allege that complainant has never been required to conform to any tariff of charges or rates prescribed by any municipal ordinance of the City of New York as to any of complainant's interstate business; and except that defendants, upon information and belief, deny that

any contract or arrangement of any kind was made between said Adams Express Company and the Bureau of Licenses of the City of New York by which a specified number of licenses was agreed upon as representing the domestic business done within said City of New York, as alleged in said amended bill of complaint or otherwise.

SEVENTH. Defendants have no knowledge of any of the matters or things alleged in paragraph numbered IX of said amended bill of complaint herein, and pray that complainant may be required to make full proof thereof, if the same is deemed material, except that defendants deny that said Adams Express Company was unable to secure due police protection in the conduct of its business within the city, but on the contrary defendants aver that extra and all reasonable police protection has been at all times afforded to said Adams Express Company within the city.

EIGHTH. Defendants admit that one or more unlicensed drivers of unlicensed wagons of the said Adams Express Company have been heretofore arrested in the City of New York for violation of said ordinances hereinbefore referred to, and that defendants intend to enforce the said ordinances against said Adams Express Company and its drivers as well as all other expressmen doing business within the city in a due, orderly and lawful way, and that defendants claim and allege that said ordinances apply to the drivers and wagons of said Adams Express Company notwithstanding the fact that such drivers and wagons may be engaged in transporting interstate shipments; but defendants deny that they have seized and impounded or threatened to seize and impound wagons of said Adams Express Company and the contents thereof, except that upon the arrest of the drivers hereinbefore referred to the wagons driven by said drivers were removed from the city streets to a place of

safety and there kept until same were delivered to 73
and removed by duly authorized persons acting for said Adams Express Company, to whom the same were delivered upon demand. Defendants admit that they intend to prevent by all lawful means the use of unlicensed express wagons within the city and if necessary to that end they intend to and will remove said unlicensed wagons from the streets of the city to a place of safety where the same with their contents will be safely kept to be returned upon demand to said Adams Express Company or its duly authorized representative. Defendants further deny that the threatened enforcement of said ordinances will prevent said Adams Express Com- 74
pany from carrying on its interstate business or from performing its duty as a common carrier, or that such acts and threatened acts are or would be an unlawful interference with interstate commerce, or with the business and property of said Adams Express Company, or that the enforcement of such ordinances will or would inflict irreparable injury or any injury upon said Adams Express Company. Save as hereinabove expressly admitted or denied, defendants have no knowledge of the truth of any other matter or thing alleged in said paragraph X of said amended bill of complaint herein, and pray that complainant may be required 75
to make full proof thereof, if the same is deemed material.

NINTH. Defendants deny that they or either of them have in any way trespassed upon the rights of complainant as alleged in said amended bill of complaint or otherwise, and deny that complainant is entitled to any relief whatever, or any part of the relief in said amended bill of complaint demanded, all of which matters and things these defendants are ready and willing to prove as this honorable court shall direct, and these defendants pray to be

76 hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ARCHIBALD R. WATSON,
Corporation Counsel,
Solicitor for Defendants,
Hall of Records,
Borough of Manhattan,
New York City.

WM. B. HALE,
Counsel for Defendants,
40 Wall Street,
New York City.

77 UNITED STATES OF AMERICA,
State of New York,
City and County of New York. } ss.:

JAMES C. CROPSEY, being first duly sworn, deposes and says: I am one of the defendants above named. I have read the foregoing answer and know the contents thereof, and the same is true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

JAMES C. CROPSEY.

Subscribed and sworn to before me this 4th day of
78 January, 1911.

SAMUEL P. DUBOIS,
Notary Public, Queens Co.,
Cert. filed in N. Y. Co.
Register No. 2164.

UNITED STATES CIRCUIT COURT, 79

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM M. BARRETT, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company,

Complainant,

AGAINST

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of The City of New York, and JAMES C. CROPSEY, as Police Commissioner of The City of New York,

Defendants.

Replication. 80

This replicant, William M. Barrett, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders 81 of said Company, saving and reserving to himself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants, for replication thereunto saith that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other mat-

82 ter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this Honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed.

New York, January 5th, 1911.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for Complainant,
44 Wall Street,
Borough of Manhattan,
New York City.

83

WILLIAM D. GUTHRIE,
Counsel.

84

CIRCUIT COURT OF THE UNITED STATES, 85

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM M. BARRETT, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company,

Complainant,

vs.

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of The City of New York, and JAMES C. CROPSEY, as Police Commissioner of The City of New York,

Defendants.

In Equity. 86

SIR:

NOTICE IS HEREBY GIVEN, that we shall proceed to take proofs for final hearing on the part of the complainant under the 67th Rule of the Supreme Court for courts in equity, as amended, or in accordance with the statutes in such case made and provided, and in pursuance of the rules and practice of this Court, before John A. Shields, Esq., an examiner of this court, at his office in the Post Office Building, Borough of Manhattan, City of New York, on the 11th day of January, 1911, at 2:30 o'clock in the afternoon. 87

You are invited to attend and cross-examine any witnesses produced. The examination will be ad-

88 journed from day to day, and to such time and place as may be required, without further notice.

Dated, New York, January 7, 1911.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for Complainant,
Office and Post Office Address,
44 Wall Street,
New York City.

To ARCHIBALD R. WATSON, Esq.,
Solicitor for Defendants,
Hall of Records,
New York City.

89 Ordered accordingly.

JOHN A. SHIELDS,
Standing Examiner.

90

UNITED STATES CIRCUIT COURT, 91

SOUTHERN DISTRICT OF NEW YORK.

WILLIAM M. BARRETT, as president of the Adams Express Company, individually and as a shareholder in said company, suing on behalf of himself and all other members and shareholders of said company,

Complainant,

AGAINST

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and JAMES C. CROPSEY, as Police Commissioner of the City of New York,

Defendants.

In Equity. 92

Testimony on Final Hearing.

Met pursuant to due notice before JOHN A SHIELDS, Esq., at his office in the Post Office Building, New York City, on Wednesday, January 11th, 1911, at 2.30 P. M. 93

APPEARANCES:

WILLIAM D. GUTHRIE, Esq., and BERNARD HERSHKOPF, Esq., for the Complainant.

WILLIAM B. HALE, Esq., and A. C. WEIL, Esq., for the Defendants.

94 William M. Barrett.

WILLIAM M. BARRETT, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. Will you please state your name, your age, your residence and occupation? A. William M. Barrett; 52 years; residence, New York City; president, Adams Express Company.

Q. 2. How long have you been connected with the Adams Express Company? A. Since 1874.

Q. 3. Will you state briefly in what capacities and to what extent you are familiar with the prop-
95 erty and business of the Adams Express Company? A. Well, I entered the service of Adams Express Company when I was about 16 years of age, and I have occupied the various positions in the different grades from a clerkship to my present position.

Q. 4. In what places have you been so engaged? A. I entered the service in 1874 at Cincinnati, and remained there until 1896 when I was transferred. Before I left Cincinnati I was what was called the junior member of the board of managers, and resident member of the board of managers of the West, and had charge of the supervision of the so-called
96 Western department, and more particularly the southern division of the Western department. In 1896 I was transferred to Philadelphia with supervision of the then called Pennsylvania department, now called the Eastern department of our company. In 1907 I was transferred to New York as vice-president, with supervision—with the immediate supervision, and I had charge of the business of our company all east of Pittsburg, which included the New England department of our company, and embraces the territory all east of New York.

Q. 5. Are you familiar with the various branches and routes of the Adams Express Company and the property which it owns? A. I am.

Q. 6. In what business is the Adams Express Company engaged at the present time? A. In the express business.

Q. 7. And how long has it been engaged in what is known as the express business? A. Since 1854.

Q. 8. Will you briefly describe the nature of such business? A. The Adams Express Company is a common carrier, and is engaged in collecting, transporting and delivering—partly by means of 98
railroads and steamboat lines—of money, bonds, jewelry, live stock, valuable packages, perishable matter, and it uses the instrumentalities of railroads by employing special express cars on passenger trains or exclusive express trains which maintain passenger train schedule between commercial centers.

Q. 9. What is the difference in respect of the carriage of packages between railroads and steamboats on the one hand and express companies on the other? A. The express companies maintain supervision and custody from the time of the receipt of the shipment until its delivery. It is always under 99
the care and custody of an employee of the company from the moment of its receipt until its delivery, whether it is on the wagons or in the offices or in the cars on the railroads or in the offices of the destination prior to delivery. The railroad companies do not attempt to transport small and valuable shipments; they have no organization to handle such business, and would not accept it; they have no terminal—so-called terminal pick-up and delivery service; their business is brought to them, loaded in cars, and is only under the supervision of the so-called train crew, which would consist of

the engineer and conductor and fireman and brakesmen.

Q. 10. In the shipment of packages by express over railroads or steamboat routes, what is the custom invariably or otherwise of the express companies in regard to the goods being accompanied by messengers or agents of the express companies? A. The custom is absolutely that they should always be in charge of an employee of the express company.

Q. 11. So that this custom of having an em-
101 ployee of the express company accompany the shipments, whether by railroad or steamboat, or otherwise, is invariable? A. Absolutely so.

Q. 12. Over how many lines of steam railroads in the United States does the Adams Express Company conduct its business? A. 94.

Q. 13. And to what extent is the business of the Adams Express Company interstate, or the carriage of packages from one state to another?

Mr. Hale: I object to that, unless limited to transportation from the State of New York to other states, as irrelevant and immaterial.

A. From New York to——

Q. 14. Anything in the United States? A.
102 From Boston east—Colorado; Denver, Colorado; east and west.

Q. 15. And how many states does that cover? A. 31 states.

Q. 16. Have you any data to show to what extent or what percentage of your whole business is interstate as distinguished from intra-state? A. We could prepare that.

Q. 17. But you have not got it now? A. No.

Q. 18. Over how many miles does the company operate by steam railway? A. 32,994 miles is the

total mileage of Adams Express Company steam railways.

Q. 19. Have you prepared a table or statement showing the various railroads in the United States over which the Adams Express Company operates its express business? A. I have.

Q. 20. And is the paper which I now produce the table or statement which you have thus prepared? A. It is.

Q. 21. And is that to the best of your knowledge and belief an accurate statement of the names of railroads over which the Adams Express Company 104
operates its express business and the number of miles of such railroads? A. It is.

Mr. Guthrie: I offer that in evidence.

Mr. Hale: Objected to as incompetent, irrelevant and immaterial.

Paper referred to marked Complainant's Exhibit No. 1, J. A. S., Ex'r., January 11th, 1911.

Q. 22. Does the Adams Express Company also operate its express business over electric lines of railway? A. It does.

Q. 23. Over how many such lines does it so operate? A. 13.

Q. 24. And they represent a total mileage of how 105
much? A. 245.

Q. 25. Have you prepared a statement showing the names of such electric lines, where located and the number of miles? A. I have.

Q. 26. And is the statement which I now produce a true statement to the best of your knowledge and belief of such electric lines and the mileage? A. It is.

Q. 27. Does your company also operate over steamboat lines? A. It does.

106 William M. Barrett.

Q. 28. Of how many separate companies or concerns? A. 20.

Q. 29. And approximately how many miles of service does that represent? A. 3,304.

Q. 30. And is the paper which I now produce a true statement of the names of the various steamboat lines and of the mileage, to the best of your knowledge and belief? A. It is.

Mr. Guthrie: I offer that in evidence.

Mr. Hale: Same objection.

Paper referred to marked Complainant's
107 Exhibit No. 2, J. A. S., Ex'r., January 11th, 1911.

Q. 31. Does the Adams Express Company also operate its express business over stage and wagon lines? A. It does.

Q. 32. And how many such stage or wagon lines? A. 15.

Q. 33. Covering how many miles of route? A. 73.

Q. 34. Is the statement which I now produce a correct statement of the names of the stage and wagon lines and the mileage over which the Adams Express Company operates its express business? A. It is.

Mr. Guthrie: I offer that in evidence.

108 Mr. Hale: The same objection.

Paper referred to marked Complainant's Exhibit No. 3, J. A. S., Ex'r., January 11th, 1911.

Q. 35. Have you prepared a summary or tabulation showing the mileage by States and Territories operated by the Adams Express Company in its express business as of December 31st, 1910, showing separately the names of the states or territories, the steam roads and mileage, the electric roads, steamboat lines and stage and wagon roads? A. I have.

Q. 36. And is the paper which I now produce a correct summary or tabulation of such roads and routes? A. It is.

Q. 37. These papers introduced in evidence appear to be as of December 31st, 1910. Do they represent the condition as of to-day? A. Substantially so; yes, I would say.

Mr. Guthrie: I offer that summary or tabulation in evidence.

Mr. Hale: Same objection.

Paper referred to marked Complainant's Exhibit No. 4, J. A. S., Ex'r., January 11th, 1911. 110

Q. 38. Can you state approximately the number of packages handled daily by the Adams Express Company in the City of New York, representing interstate shipments, either from the City to some point outside of the State of New York, or from some point outside of the State of New York to the City of New York? A. I can.

Q. 39. And what is the average number of packages so handled? A. At least 50,000.

Q. 40. And does this number increase at certain periods of the year? A. It does.

Q. 41. And particularly at what periods? A. Around the Christmas holidays. 111

Q. 42. And does the number then very largely increase? A. Very largely.

Q. 43. Are you able to give us an approximation of the number of packages handled by the Adams Express Company yearly in its business? A. I am.

Q. 44. About how many packages does it handle yearly in its business? A. I would have to refer to that statement. (Referring) Exclusive of money and valuables about 72,000,000 pieces.

Q. 45. Per annum? A. Per annum.

Q. 46. How many employees has the Adams Express Company engaged in interstate commerce?

Mr. Hale: Objected to as incompetent, irrelevant, immaterial, as calling for a conclusion of the witness, and as not limited to the business transacted in the City of New York.

A. (Referring) 18,038.

Q. 47. And of that number of employees how many are employed in the State of New York? A. Over 2,000.

Q. 48. Have you prepared a statement showing in detail the positions occupied by these 18,000 employees so engaged in the business of the company throughout the United States and the 2,000 engaged in New York, or the New York department? A. I have.

Q. 49. Is the paper which you now produce a tabulation or summary of such employees? A. It is.

Q. 50. And to the best of your knowledge and belief, is it substantially correct? A. It is.

Mr. Guthrie: I offer that in evidence.

Mr. Hale: Objected to as irrelevant, incompetent and immaterial.

Paper referred to marked Complainant's Exhibit No. 5, J. A. S., Ex'r, January 11th, 1911.

Q. 51. Will you please state as nearly as you can the amount of capital invested in the plant, wagons, facilities and real estate used by the Adams Express Company in its business?

Mr. Hale: Objected to as wholly irrelevant to the issue.

A. About seven million dollars.

Q. 52. Will you please state how your business is conducted in the City of New York in respect to the receipt or collection of packages to be carried by your company and the delivery of packages received from other States? A. We have three ter-

minals in New York City, including, of course, Jersey City and Weehawken and 48th Street Grand Central Station, and we also maintain approximately over 150 receiving offices, together with their organized and equipped force to receive and deliver freight. We have a number of wagons and automobiles; all of them are provided with drivers and helpers, and practically all of New York City is patrolled by our wagons in the collection and delivery of parcels and freight.

Q. 53. What are the duties and functions of your drivers and helpers? A. Our drivers and helpers 116
are really collection and delivery agents. Before being employed we make a rigid investigation as to their antecedents, their responsibility and previous employment, and if they pass the scrutiny of that investigation (it depends upon their age) some are appointed maybe as helpers, or if old enough and intelligent enough, as drivers. They are required to be competent as solicitors and to negotiate contracts and issue bills of lading for matter to be accepted by the company, and to transact business generally with the heads of houses and also families.

Mr. Hale: The answer is objected to as not re-
sponsive to the question, and as irrelevant and im- 117
material, and as relating to transactions between the Adams Express Company and its employees, not binding upon the City or these defendants.

Q. 54. Are they authorized by the express company to sign the bills of lading or express receipts or contracts for carriage? A. They are.

Q. 55. And does that apply both to drivers and helpers? A. It does.

Q. 56. Are they familiar or made familiar with the various tariffs and schedules or classifications of rates established by the Adams Express Company? A. They are, and they are required to be so.

118 William M. Barrett.

Q. 57. Is that indispensable for the conduct of their duties? A. It is.

Q. 58. Is it the custom throughout the City of New York for your drivers and helpers to sign these contracts of carriage or bills of lading? A. That is the universal practice.

Q. 59. Do these drivers keep records and receipts of the packages which they may from time to time deliver as received from other states? A. They do.

Q. 60. To your knowledge do they solicit business for the express company? A. That is part of the requirement, and they do.

119 Q. 61. How many wagons drawn by horses are used by the Adams Express Company in its business in the City of New York? A. 448.

Q. 62. And how many automobiles? A. 92.

Q. 63. Are these automobiles licensed by the state? A. They are.

Q. 64. How many of these wagons drawn by horses are kept or stabled in New York or Brooklyn? A. All of the automobiles are in New York City and Brooklyn. Probably 150 of the horse wagons are stabled in New York City.

Q. 65. And the remainder of the horse wagons are all stabled where? A. In Jersey City.

120 Q. 66. And that is their location when not in use? A. Yes, sir.

Q. 67. Have you frequently more than two men on a wagon engaged in collecting or delivering freight? A. We have, in the business section of the City.

Q. 68. About how many men are used daily in the City of New York by the Adams Express Company in the business of collecting and delivering packages? A. About 900.

Q. 69. How much of the business done by the

Adams Express Company in the City of New York represents packages received destined to points outside of the State of New York and packages received from points outside of the State of New York for delivery in the City of New York? A. About 98 per cent.

Q. 70. How much of the total number of packages handled by the Adams Express Company represents local business? A. About one per cent.

Q. 71. And how much represents what may be termed intrastate business? A. About one per per cent.

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Q. 72. Are all these 900 men or employees as to whom you have testified engaged daily in handling what may be termed interstate packages? A. They are.

Q. 73. What is the local business that you do, and between what points? A. The local business handled in conjunction with our interstate business represents only the traffic in New York State between New York City and the Connecticut State line.

Q. 74. Do you also do a local business in the City of New York? A. We do.

Q. 75. Is this local business in the City of New York the one per cent. that you have already referred to? A. It is.

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Q. 76. Will you please explain exactly how that part of your business is conducted? A. Our patrons and shippers—we have a regular business of carrying interstate shipments—prefer the Adams Express Company because of its reliability to handle local New York City traffic, and the wagon engaged in the handling of the interstate traffic is also engaged in the handling of the New York City traffic, which is, as I have before testified—about one per cent. of the total.

124 William M. Barrett.

Q. 77. Am I correct in assuming that this is transacted as a convenience to your interstate customers?

Mr. Hale: Objected to as leading and as incompetent, irrelevant and immaterial.

A. That is true.

Q. 78. Have you made a calculation to determine whether the local business done in the City of New York could be separated from your interstate business?

Mr. Hale: Objected to as calling for a conclusion
125 and prediction of the witness.

A. We have.

Q. 79. And will you please state briefly what would be the result or effect of carrying on this strictly local business in the City of New York by men and wagons other than those engaged in interstate business?

Mr. Hale: Same objection.

A. As I have said before, the percentage of the local business handled by the Adams Express Company is relatively so small that in order to give efficient wagon service for this very small business would mean practically a duplication of our entire
126 wagon equipment and force in New York City, which could not possibly stand the expense. It would mean congestion at our terminals and be utterly impracticable to do so.

Mr. Hale: The answer is objected to as being merely the opinion and argument of the witness, and not the statement of any act, fact or declaration relevant to the issue.

Q. 80. Have you made an investigation to ascertain what would be the cost of transacting that local business if you had to carry it on separate and apart from your interstate business? A. I have.

Mr. Hale: This general line of inquiry is objected to as incompetent, irrelevant and immaterial.

Q. 81. Will you please state the result of such investigation? A. The cost of wagon service alone would represent about 87 per cent. of the business.

Q. 82. And what other expenses would have to be added to that in order to transact it separately and apart from your interstate business? A. Office rental, terminal expenses, clerks, supervisory force and accounting.

Q. 83. Is it the fact, Mr. Barrett, that all this local business in the City of New York is transacted by your employees and your wagons that are engaged in interstate commerce? A. It is. 128

Q. 84. Referring now to what we may term your intra-state business—which I understand to represent one per cent. of your business in the City of New York—will you kindly describe what that intra-state business consists of? A. That represents business to or from New York City to points in New York State located on the New Haven Railroad between here and the New York state line and Connecticut.

Q. 85. And that is a distance of about how long? A. I guess about 16 miles from the city line.

Q. 86. How many stations or points do you serve in that distance? A. Not more than eight or ten. 129

Q. 87. Over what railroad is this intra-state business done between New York City and the state line? A. New York, New Haven & Hartford Railroad.

Q. 88. And that is one of the railroads over which the Adams Express Company operates its express business? A. It is.

Q. 89. Is it practicable or has it been ever found practicable to have two express companies oper-

130 William M. Barrett.

ating at the same time on one line of railroad or one train?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as calling for the conclusion and opinion of the witness.

A. It is decidedly impracticable.

Q. 90. To your knowledge has that been tried? A. It has.

Q. 91. And found impracticable? A. Yes, sir.

Q. 92. Is it also the fact, is it not, that the courts have held that the railroad companies engaged in
131 interstate commerce were entitled to limit the express service on their lines to one company?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, as not the best evidence, and as calling for the opinion and conclusions of the witness upon matters of law.

A. Yes, sir.

Q. 93. You recall, do you not, that that question was litigated and determined in what are known as the Express Cases in the Supreme Court of the United States? A. I do.

Q. 94. And since the decision of these cases in the Supreme Court of the United States has it been the invariable custom of railroads to limit the ex-
132 press service on their lines to one express company? A. It has.

Q. 95. Confining ourselves for the moment to intra-state business shipped on the New York, New Haven & Hartford Railroad from the City of New York to points this side of the Connecticut state line, I desire to ask whether such shipments are invariably accompanied by messengers? A. They are.

Q. 96. And do you have separate messengers for the intra-state business as distinguished from the

messengers in charge of the interstate business? A. No.

Q. 97. Are the intra-state packages in charge of the messengers who continue beyond the state line? A. They are.

Q. 98. And that is the invariable custom? A. That is.

Q. 99. You have, have you not, agents at the various stations between New York and the state line handling your business? A. We have.

Q. 100. Do these agents also handle both your intra-state and interstate business over this New 134
York, New Haven & Hartford Railroad? A. They do.

Q. 101. Would it be practicable, Mr. Barrett, to separately conduct the intra-state business as distinguished from the interstate business of your company over the New York, New Haven & Hartford railroad between New York City and the state line?

Mr. Hale: Objected to as calling for the opinion of the witness.

A. It would be impracticable.

Q. 102. Are you able to state approximately the value of the shipments handled by the Adams Express Company in the City of New York daily or 135
for any given time? A. No, I am not—the value?

Q. 103. The value? A. No, sir.

Q. 104. Is it or is it not the fact that most of the shipments are valued at $50? A. That is true; not exceeding $50.

Q. 105. And doesn't the form of your bill of lading in general use provide for such an agreed valuation of $50 in case the real value is not disclosed?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as not the best evidence,

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and as calling for the opinion of the witness as to legal construction of its bills of lading, which are not offered in evidence.

A. That is true.

Q. 106. Is the form now shown you the form of bill of lading in use by the Adams Express Company in conection with its business, whether interstate or intra-state? A. It is, but it is a freight receipt; it doesn't cover all.

Q. 107. The form shown you is the one that covers the shipment of ordinary packages and ordinary freight? A. Freight.

137 Mr. Guthrie: I offer that in evidence.

Paper referred to marked Complainant's Exhibit No. 6, J. A. S., Ex'r, January 11th, 1911.

Q. 108. Does the Adams Express Company use a different form of bill of lading in connection with the shipment of moneys, specie, bonds, coupons and negotiable paper? A. It does.

Q. 109. And is the form now shown you the form that is used by the express company in such cases? A. It is.

Mr. Guthrie: I offer that in evidence.

138 Paper referred to marked Complainant's Exhibit No. 7, J. A. S., Ex'r, January 11th, 1911.

Q. 110. Have you also another form of receipt or contract in connection with your collection department? A. We have.

Q. 111. And is the paper now produced the form which you use? A. It is.

Mr. Guthrie: I offer that in evidence.

Paper referred to marked Complainant's Exhibit No. 8, J. A. S., Ex'r, January 11th, 1911.

Q. 112. Are these three forms those in general use in the City of New York and elsewhere throughout the United States? A. They are.

Q. 113. And are these forms fac-similes of those filed with the Interstate Commerce Commission? A. They are.

Q. 114. Are these the forms of contracts or bills of lading which your drivers and helpers sign or execute on behalf of the Adams Express Company? A. They are.

Q. 115. And they are authorized to do so? A. They are.

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Q. 116. Does the Adams Express Company carry bullion and gold and silver ore? A. It does.

Q. 117. And is this a matter of daily occurrence? A. It is.

Q. 118. At times to what extent are you carrying in the City of New York gold and silver ore and bullion; I mean in value? A. Hundreds of thousands of dollars in bullion.

Q. 119. And in gold and silver ore? A. And in gold and silver ore.

Q. 120. Does the Adams Express Company also constantly carry money? A. It does.

Q. 121. And is this a matter of daily occurrence? A. It is.

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Q. 122. Is it the fact that most of the banks of the United States that ship money send it by express? A. It is.

Q. 123. At times how much in amount would you say the Adams Express Company has at one time in its possession carrying to and from the City of New York? A. Oh, millions of moneys.

Q. 124. And that is a matter of frequent occurrence, is it not? A. Frequent occurrence, in fact daily occurrence.

Q. 125. Does the company also carry securities,

bonds, stock and other negotiable documents? A. It does.

Q. 126. And is that a matter of daily occurrence? A. It is.

Q. 127. And at times does that amount to very much, and if so to how much? A. Hundreds of thousands of dollars, that is to and from New York City.

Q. 128. Does the express company do a business in the carrying of packages of jewelry? A. It does.

Q. 129. How many daily does it carry? A. Several thousand.

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Q. 130. And do all the jewelers of the City of New York ship almost daily over your company? A. They do.

Q. 131. At holiday times, how many packages of jewelry have you had at any one time in your possession in the City of New York destined for points outside of the City? A. About seven thousand.

Q. 132. In the shipment of jewelry and other valuable packages is the value always declared? A. Not always.

Q. 133. What is frequently the custom? A. It is customary for some to obtain outside insurance, and the shipments are made under the form of

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our receipt limiting the value to not exceeding $50.

Q. 134. But if the value is declared, however large, your company as common carriers must carry them, must it not? A. It must.

Q. 135. And you understand that it assumes full liability for the amounts so declared?

Mr. Hale: I object to that question as irrelevant and immaterial and as a conclusion.

A. It does.

Q. 136. Is the amount of your charge or the schedule of your rates based upon declared value? A. It is.

Q. 137. So that the greater the value of a package the higher the rate of carriage? A. That is true.

Q. 138. And is that regulated by the schedules or classifications filed with the Interstate Commerce Commission at Washington? A. Yes.

Q. 139. And these jewelry packages, are they collected and delivered as the case may be by these drivers and helpers to whom you have referred? A. They are.

Q. 140. And they are authorized to receive and receipt for the packages no matter what the declared value may be? A. The practice is not to give receipts for money shipments in the street or at the offices or at the banks, but they do deliver money packages and valuable packages. 146

Q. 141. But in the case of other valuable packages than money, are the drivers authorized to receipt no matter what the declared value may be? A. They are.

Q. 142. What is the practice in regard to the receipt of packages of money shipped by banks or bankers? A. The requirement is for the banks to deliver the moneys to our offices.

Q. 143. To one of the offices—— A. Either main offices or branch offices. 147

Q. 144. Do you carry bullion and money and Government bonds for the Government of the United States? A. We do.

Q. 145. Is that a matter of constant and almost daily occurrence; and between what points is such carriage of money? A. Practically all over the territory of the Adams Express Company.

Q. 146. From and to the State of New York, and from and to the City of New York? A. That is true.

Q. 147. Does the Adams Express Company carry perishable matters, and to what extent? A. It

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does. The extent of the perishable matter handled into New York City from the south and west represents approximately 60 per cent. of the bulk.

Q. 148. So that approximately 60 per cent. of all the packages which the Adams Express Company carries to New York from the south or the west consists of what you term perishable shipments, is that so? A. Not in pieces, but in bulk.

Q. 149. What do you mean by the term perishable? A. Perishable would cover fruit and vegetables, fish and valuable animals, foodstuffs; I
149 think that generally covers it.

Q. 150. Would it include butter, eggs—— A. Butter, that is foodstuff.

Q. 151. —and milk? A. And milk.

Q. 152. Oysters? A. Oysters and clams.

Q. 153. About how many articles of what may be termed perishable freight are included in your specifications? A. About 50.

Q. 154. Will you please explain here whether such perishable freight requires prompt delivery? A. It does, the quickest possible delivery.

Q. 155. And what is the effect of delay in such cases? A. It would be a depreciation, if not a total loss.

150 Q. 156. To what extent does the business of the express companies of the country require prompt and rapid delivery, Mr. Barrett?

Mr. Hale: Objected to as calling for the opinion of the witness and for matters obviously not within his personal knowledge.

A. The essence of express business is speed. Without speed the object of the service is not obtained. Express companies are the only transportation companies that have service on passenger trains; otherwise without passenger train service you could not obtain quick delivery, speed.

Q. 157. Does the express company also carry fragile or easily broken freight, and to what extent? A. Well, it is a very important extent—valuable crockery, chinaware, works of art—constitutes an important volume of express traffic.

Q. 158. And all that, I take it, is specified in detail in the classifications which are filed with the Interstate Commerce Commission? A. It is.

Q. 159. The Adams Express Company and the other interstate express companies are subject to the Interstate Commerce Law, are they not?

Mr. Hale: Objected to as calling for the opinion 152
of the witness on a matter of law.

A. They are.

Q. 160. And does your company comply with the provisions of the Act to regulate commerce?

Mr. Hale: The same objection.

A. It does—it has.

Q. 161. Does your company make, file and publish the schedules of rates and classifications required by that act? A. It has.

Q. 162. To what extent have these schedules or classifications been filed? A. All of our classifications and all of our rates have been filed with the Interstate Commerce Commission.

Q. 163. Could you state how voluminous those 153
classifications are? A. Oh, they are exceedingly voluminous; the compilation of the records of rates for the Interstate Commerce Commission required the employment of probably a hundred clerks for nearly two years.

Q. 164. Referring, Mr. Barrett, to the Exhibits 6 and 7, being the forms of the bills of lading in use by your company, will you briefly state what the rate fixed or collected by the Adam Express Company covers? A. The assessment of transportation charges implies the collection and the delivery, the

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collection from the house or the place of business of the shipper, and its delivery at destination to the place of business or residence of the consignee.

Q. 165. Does the rate as fixed and filed with the Interstate Commerce Commission and published under the Interstate Commerce Law include what we may call the wagon service? A. It does.

Q. 166. And is that invariably the case? A. It is.

Q. 167. So that the wagon service performed by your company in the City of New York in respect
155 of interstate shipments, whether in the collection of those shipments or in the delivery of shipments received from other States, is not charged for independently of the through rate? A. It is not.

Q. 168. Then I understand that the rate made in these schedules so filed with the Interstate Commerce Commission is a single indivisible rate covering the whole service rendered by the Adams Express Company from the time of the receipt of the package by the driver collecting the same in the City of New York until actually delivered to the consignee by one of your wagons at the point of destination? A. That correctly states the fact.

156 Q. 169. And the converse is true that this charge or through rate covers the service of collection in the foreign city and the delivery in the City of New York by your wagons to the consignees? A. That is true.

Q. 170. Will you please state what is the amount in dollars of the total charges on business originating or terminating in the City of New York per month? A. About seven hundred thousand dollars.

Q. 171. And what is the average amount of such business so originating and terminating in New

York per day? A. About twenty-three thousand dollars.

Q. 172. Were you familiar with the occurrences connected with the recent strike in the City of New York of express drivers?

Mr. Hale: Objected to as irrelevant and immaterial.

A. I am.

Mr. Hale: This objection is to apply to all questions asked concerning the strike.

Q. 173. When did that strike begin? A. October 21st.

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Q. 174. 1910? A. 1910.

Q. 175. And when did it terminate? A. November 14th, 1910.

Q. 176. In the meantime to what extent was the business of the Adams Express Company affected? A. The business of the Adams Express Company was affected to the extent of practically a paralyzation of our business in New York City.

Q. 177. Is it or is it not the fact that during that period very little interstate business was transacted? A. Very, very little, relatively.

Q. 178. And what was the reason why such business was not transacted? A. We were unable on account of the authorities to move our wagons in the streets of the City of New York.

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Mr. Hale: I object to that answer as a mere conclusion, and ask that it be stricken out.

Q. 179. Well, how did the strike originate, and describe briefly its effect on your business? A. On October 21st about ten or a dozen youths, so-called, boys, between the ages of 16 and 20, made application to the local agent of the United States Express Company at Hoboken for an increase in salary, and demanded that the increase in salary be allowed forthwith. The local agent informed them he had

no authority, told them he would have to refer to his immediate superior, and would advise them. Within an hour after the first application was made threats of violence had been made, the helpers had induced the drivers to vacate their posts, and within several hours pandemonium reigned. The next day the same company suffered to some extent the same experience at Communipaw, and the day following, I think, if that wasn't Sunday, and perhaps on Monday, the Wells-Fargo Express Company—by the threats of the striking employees
161 of the United States Express Company and mobs and hoodlums generally—forced the wagon employees of the Wells-Fargo Express Company to abandon that service.

Q. 180. Now, Mr. Barrett, confining ourselves to the Adams Express Company, what first happened in connection with the strike, of your personal knowledge, so far as the Adams Express Company itself is concerned? A. We had no previous advice or notice or demand by any employee of the Adams Express Company. The first information we had was our helpers and subsequently our drivers abandoning their posts. The helpers apparently were in sympathy with the striking em-
162 ployees of the other companies, and the drivers were afraid and protested against being sent out on the wagons because of fear of violence and theats of intimidation had been made.

Q. 181. Then so far as the Adams Express Company was concerned had any demands or grievances been submitted to you, or so far as you know to any officers of the Adams Express Company, prior to the strike? A. None whatever.

Q. 182. So far as you knew and so far as any officer of the Adams Express Company knew to the best of your knowledge and belief had any de-

mands or grievances been submitted prior to the strike? A. None.

Q. 183. So that so far as the Adams Express Company is concerned it had no knowledge of this strike before it was precipitated? A. That is true.

Q. 184. Have you any personal knowledge of interference by any one with the wagons of the Adams Express Company during the strike? A. No.

Q. 185. Have you any personal knowledge in regard to the police protection? A. I have not.

Q. 186. Have you any personal knowledge in regard to the arrest of the drivers of the Adams Express Company? A. I have not. 164

Q. 187. Did you have any personal knowledge of the impounding of one or more wagons of the Adams Express Company by the police authorities? A. I have no personal knowledge, but I was advised.

Q. 188. By whom were you advised of the arrest of drivers, if you were so advised, or of the impounding of wagons of the Adams Express Company?

Mr. Hale: Objected to as calling for hearsay, and also as assuming a fact not yet proven.

A. By our general manager. 165

Q. 189. And what is his name? A. Mr. Zimmerman.

Q. 190. Mr. Barrett, have you made an investigation and a calculation of the amount of freight which the Adams Express Company lost during the period of the strike, estimated upon the average for other similar periods?

Mr. Hale: Objected to as irrelevant and immaterial, and as calling for a mere guess.

A. I have.

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Q. 191. And how much was such actual loss in freight? A. At least $350,000.

Q. 192. Does that include any allowance for claims for delay and damage or loss of perishable and other shipments? A. Oh, no.

Q. 193. Mr. Barrett, in your opinion, would it be practicable to carry on the interstate business of the Adams Express Company in the City of New York without the use of wagons and drivers to collect packages and deliver them?

Mr. Hale: Objected to as calling for the opinion
167 of the witness upon one of the matters in issue.

A. It would not be practicable.

Q. 194. To your knowledge for how many years has the Adams Express Company been using wagons in the City of New York? A. Oh, for 50 years.

Q. 195. So far as you know until the present controversy arose, or the recent strike, had the drivers of the Adams Express Company been required to take out licenses by the City of New York.

Mr. Hale: Objected to as irrelevant and immaterial, and because the law speaks for itself as to what is required.

A. No.

168 Q. 196. For how many years have you been located here in New York? A. Over three years.

Q. 197. And during that period has any demand ever been made upon the Adams Express Company that it should take out licenses for its drivers engaged in collecting and delivering packages in the City?

Mr. Hale: Objected to as irrelevant and immaterial.

A. No.

Q. 198. Has the Adams Express Company to

your knowledge ever taken out a license for its express business in the City of New York? A. No.

Q. 199. To your knowledge has any demand ever been made on behalf of the authorities of the City of New York that it should so take out a license for the conduct of its express business? A. No.

Q. 200. Mr. Barrett, could an ordinary teamster or truckman be put in charge of your wagons collecting and delivering freight if he previously had no knowledge of your business?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, as calling for the conclusion of the witness. 170

A. It would be very unwise to do so.

Q. 201. Will you state the reasons why? A. Because of the lack of intelligence and his inability to execute contracts and intelligently interpret the tariffs, rules and regulations of the company.

Q. 202. To what extent is it necessary that your drivers and helpers should be competent and experienced men, particularly in the City of New York?

Mr. Hale: The same objection.

A. In the City of New York our drivers are obliged to execute bills of lading and contract and make the assessment of transportation charges, which calls for an exact assessment, otherwise we would be amenable under the Interstate Commerce Act for either charging greater or less than the lawful rate. 171

Q. 203. Are you able to state how many of your drivers and helpers that you employ in the City of New York reside in New Jersey? A. Approximately 350 or 400.

Q. 204. In case of a strike in the City of New York among your drivers and helpers would it be practicable to transfer competent and experienced

drivers in your employ in other cities? A. It would.

Q. 205. And to what extent would this be necessary for the protection of your business?

Mr. Hale: Objected to as calling for opinions upon conditions which may never exist.

A. Under the law we would be absolutely powerless, because we could not obtain experienced and efficient help that are residents in New York and could be vouched for probably by citizens of New York.

173 Mr. Hale: Answer is objected to as a mere opinion and argument, and motion is made to strike it out.

Q. 206. But if all your drivers and helpers engaged in the City of New York should leave you again as in October, 1910, to what extent would it be necessary to transfer other competent and experienced men in your employ at other points to the City of New York? A. I don't think I catch that, Mr. Guthrie. Of course it would depend upon the number of men that would go out.

Q. 207. If you had to transfer any large number of such drivers upon short or immediate notice, would it be practicable to obtain for each of such
174 drivers or helpers the testimony of reputable residents of the City of New York as to their competence?

Mr. Hale: Objected to as calling for an opinion upon a hypothetical state of facts.

A. It would.

Q. 208. You say it would be practicable? A. It would not be practicable.

Q. 209. Then the answer would be, it would not be practicable? A. It would not; it would not be possible.

Q. 210. Mr. Barrett, will you briefly describe the manner in which you conduct your business in the City of New York in regard to shipments from the City of New York to points north, south and west, and in regard to shipments from points north, south and west by way of Jersey City? A. All business that is accepted by the Adams Express Company in New York City is accumulated by means of the wagon service at the different offices and warehouses in New York City, and there, at the warehouses, they are separated for the business destined to territory north and east of New York, 176
and from the business that is destined south and west of New York City. The traffic so separated destined for east of New York City is wagoned to 48th Street and there loaded on cars, on express cars of the New York, New Haven & Hartford Railroad. The other traffic for the south and west is hauled to Jersey City and there loaded in express cars of the Pennsylvania Railroad. We also have a terminal at Weehawken. That traffic is hauled across the river to Weehawken and there loaded on express cars destined to points on the New York, Ontario & Western Railroad, and tributary thereto.

Q. 211. So that all interstate shipments collected 177
or received by the Adams Express Company in the City of New York and destined to points outside of the State of New York are taken in the wagons of the express company either to Jersey City or Weehawken in Jersey, or to the station or terminal of the New York, New Haven & Hartford Railroad at 48th Street? A. Yes, sir.

Q. 212. Now, in respect of shipments received from out of the state consigned to consignees in the City of New York south of 59th Street, what is the custom in regard to packages received from the west and south through Jersey City or Wee-

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hawken? A. Through Jersey City, all matter received at that terminal for south of 59th Street is loaded onto wagons that make delivery direct from Jersey City, from our pier at Jersey City, direct to consignee.

Q. 213. And there is then no transfer of that shipment from the time it is unloaded from the cars at Jersey City or Weehawken onto your wagon until the time when it is actually delivered to the consignee in the City of New York? A. No, sir.

Q. 214. In case the shipments are destined for
179 consignees above 59th Street what is the custom in regard to the conduct of your business? A. Our rule is to wagon that to our several offices, 124th Street and St. Nicholas Avenue, and also 85th Street, and there it is assorted and delivered by our own wagons.

Q. 215. In regard to interstate shipments to the City of New York from points east or north, does that freight all come into the city over the New York, New Haven & Hartford Railroad? A. From the east?

Q. 216. Yes. A. Yes, sir.

Q. 217. What is the custom in regard to the hand-
180 ling and delivery of packages so coming from the east over the New York, New Haven & Hartford? A. We make delivery from the 48th Street terminal, business received off of the New York, New Haven & Hartford, direct from that terminal to all points south of 59th Street. I am not prepared to answer specifically how matter is delivered for points above 59th Street from the 48th Street terminal.

Q. 218. But practically all interstate shipments coming into New York over the New York, New Haven & Hartford Railroad are transferred at 48th Street from the cars of the New York, New Haven

& Hartford Railroad onto your wagons and are then delivered to consignees without any transfer or change? A. That is true, with the exception of some Harlem section, some part.

Q. 219. Now, in the collection of shipments for points on the New York, New Haven & Hartford Railroad and other points east, what is the practice of your wagons? A. As I said before, matter is accepted at our offices or picked up by our wagons, subsequently assembled at our different clearing houses or freight warehouses, there assortment is made and wagoned from the warehouses to our 182
48th Street terminal and there loaded into cars.

Q. 220. Mr. Barrett, did you personally have any knowledge of any arrangement made at any time by the Adams Express Company with the Bureau of Licenses in regard to licensing some of your men engaged in local business?

Mr. Hale: Objected to as incompetent, irrelevant, immaterial and as assuming that there was such an arrangement.

A. No, sir.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 221. Mr. Barrett, I didn't quite understand what you meant by saying that there had been a loss of about $350,000 of freight during the strike. 183
Will you explain that a little bit, please? A. That is predicated upon the average business per day handled at New York.

x-Q. 222. You mean there was a loss of that amount of business to the Adams Express Company? A. Yes.

x-Q. 223. No physical loss of the goods, of the physical goods? A. No.

x-Q. 224. Does your company carry shipments to any points in New York except points upon the New York, New Haven & Hartford Railroad? A. It does.

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x-Q. 225. What points? A. For example, Buffalo, and points in New York State on the New York, Ontario & Western, points on the Pennsylvania Railroad located in New York State, all of which are reached from New York City via Jersey City or Weehawken.

x-Q. 226. Did you include those shipments in your estimate of what proportion was intrastate business and what interstate business? A. No, sir.

x-Q. 227. In which class did you place those? A. Interstate class.

185 x-Q. 228. To what extent would that change your proportions if that were classed as intrastate business? A. I haven't made any calculation. For instance, New York City to Buffalo, would go through New York State, New Jersey, Pennsylvania, back into New York.

x-Q. 229. For how long a time have you had approximately the number of wagons in daily use in the City of New York which you mentioned; 450, wasn't it? 448? A. Oh, that number substantially I suppose was, I would say, for the year; of course the exact number fluctuates with the business; we might have greater, we might have less.

186 x-Q. 230. And that is true as to the number of drivers, also? A. The same.

x-Q. 231. There has been no great increase in the past year? A. No.

x-Q. 232. You have spoken of some 900 other employees in the City of New York in addition to drivers, I believe. Where do they work, and what do they do? A. I referred to over 2,000 employees in the City of New York.

x-Q. 233. I think you spoke of 800 men who handled the shipments at some points in the city, did you not? A. Drivers, wagon men I referred to.

x-Q. 234. As to the wagons and horses which are stabled in Jersey City, they are daily brought over into New York City and they are employed in the manner described by you, is that correct? A. Yes, sir, all except six.

x-Q. 235. In making collections of shipments from the City of New York how are your wagons or drivers called to the customer or shipper? A. A business house ordinarily has wagon calls several times a day, depends upon the extent of the business; they may get three or four calls a day and they may by arrangement only get one or two calls 188
a day. Some of the shippers display a call card which indicates that there is some business to be forwarded by the company; there is what they call a silent call, they call, and if there are no goods to be forwarded there is nothing to be shipped.

x-Q. 236. Does your company have special drivers or delivery men for shipments of money, bonds, gold and so forth? A. Yes, sir.

x-Q. 237. All that class of shipments are delivered by special delivery men of the company? A. Money and gold, yes, sir, securities, bonds, stocks.

x-Q. 238. In making your estimate of the cost of transacting the purely intrastate business sepa- 189
rate and apart from the interstate business, how did you proceed and what elements did you consider? What was the basis of that estimate? A. Simply the number of wagons and the wages of maintaining the force and maintenance of the wagons; no cost of equipment was considered.

x-Q. 239. How did you estimate the number of wagons required? A. That was to cover the territory.

x-Q. 240. You mean to patrol it regularly? A. Yes, sir.

x-Q. 241. In the same manner that you do now for both classes? A. Yes, sir; give substantially the same service as we give to-day.

REDIRECT-EXAMINATION BY MR. GUTHRIE:

Rd-Q. 242. You were asked in regard to the delivery of money, gold, stock and securities by special men. Is such delivery made by drivers and helpers? A. They are.

Rd-Q. 243. And the delivery is made by means of your wagons? A. By means of our wagons.

Rd-Q. 244. And when you say special drivers
191 and helpers they are particular or special men to whom that duty is assigned? A. Special service, special wagons, separated—distinguished from freight.

Rd-Q. 245. And that is because of the value and the necessity for the greater care? A. The great value.

Rd-Q. 246. You were also interrogated in regard to calls, and you used the expression that certain shippers or merchants get calls. Was I correct in understanding that that meant that your drivers or helpers called upon them? A. Yes, sir.

Rd-Q. 247. Is it not the fact that the express
192 company is also constantly notified by telephone at one or more of its offices to send for shipments? A. Yes, sir.

Rd-Q. 248. And thereupon a driver and helper are sent with a wagon to the shipper to make the contract of carriage? A. Yes, sir.

Rd-Q. 249. In this Exhibit No. 5 there are specified some 423 drivers and 466 helpers under the heading of the New York department. Do those figures include the men that you have testified to who come from Jersey City and make deliveries in the City of New York? A. Yes, sir.

Rd-Q. 250. It appears on this memorandum that you have included 48 agents. What are those agents? A. That represents the superior in charge of the branch offices; for instance, we maintain an office in Harlem, the one in charge of the Harlem office is called the agent.

Rd-Q. 251. You have also specified on this Exhibit 748 clerks. Where are they employed? A. They are employed in New York City and also in Jersey City.

Rd-Q. 252. You have also specified 150 stablemen. Are part of those men employed in Jersey 194
City? A. Part of them, most of them.

Rd-Q. 253. And does the same remark apply in regard to the 191 porters? A. Yes, sir.

Rd-Q. 254. So that you have practically included as part of the New York department the men who are employed in Jersey City or to and from Jersey City? A. Yes, sir.

Rd-Q. 255. Mr. Barrett, is or is it not the fact that your tariff or tariffs and classifications for shipments from New York to other points in the State are included in the schedules and classifications which you have filed with the Interstate Commerce Commission? A. It is a fact.

Rd-Q. 256. And is it the fact that you treat such 195
business from New York through Jersey and Pennsylvania as interstate business?

Mr. Hale: Objected to as irrelevant and immaterial.

A. We do.

Rd-Q. 257. All the freight shipped from New York to Buffalo and other New York points via Jersey City through New Jersey or Pennsylvania, are they in charge of messengers? A. Yes, sir.

Rd-Q. 258. And are these messengers in charge

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of other interstate shipments at the time? A. They are.

Rd-Q. 259. Would it be practicable to segregate the shipments from New York to Buffalo and other New York points from the other interstate shipments to and from New York? A. It would not be.

RECROSS-EXAMINATION BY MR. HALE:

Rx-Q. 260. Has any demand ever been made upon your company that you procure licenses for any of these agents of whom you have spoken? A. Not that I know of.

197 Rx-Q. 261. Or any of your offices in the City of New York? A. No.

WILLIAM M. BARRETT.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

Mr. Guthrie: I offer this paper in evidence, being a copy of the opinion of Corporation Counsel Rives, dated Dec. 9, 1902.

Paper referred to marked Complainant's Exhibit No. 9, J. A. S., Ex'r, January 11th, 1911.

Adjourned to Wednesday, January 18th, 1911,

198 at three o'clock P. M.

NEW YORK, January 18th, 1911, 3 P. M.

Met pursuant to adjournment, at the offices of Messrs. Guthrie, Bangs & Van Sinderen, 44 Wall Street, New York City.

Present: Counsel as before.

Mr. Guthrie: I would like to offer in evidence a letter dated March 6th, 1908, from the firm of Cravath, Henderson & de Gersdorff, as attorneys for the Adams Express Company, to J. P. Corrigan, Chief of Bureau of Licenses of the City of New York.

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and not binding upon the City. 199

It is admitted that Messrs. Cravath, Henderson & de Gersdorff were attorneys for the Adams Express Company.

Paper referred to marked Complainant's Exhibit No. 10, J. A. S., Ex'r, January 18th, 1911.

Mr. Guthrie: I offer in evidence a letter dated March 11th, 1908, from J. P. Corrigan, Chief of the Bureau of Licenses of the City of New York, to Messrs. Cravath, Henderson & de Gersdorff, attorneys for the Adams Express Company.

Mr. Hale: Same objection. 200

Paper referred to marked Complainant's Exhibit No. 11, J. A. S., Ex'r, January 18th, 1911.

Mr. Guthrie: I offer in evidence a form of application furnished by the Bureau of Licenses, being a new form put in use since the beginning of the strike on or about October 17th, 1910, and being the form now in use by said Bureau of Licenses.

The same is received in evidence subject to verification and to a motion to strike out on any ground as defendants may hereafter be advised.

Paper referred to marked Complainant's Exhibit No. 12, J. A. S., Ex'r, January 18th, 1911. 201

It is stipulated by and between the parties that the Cosby's Code of Ordinances of the City of New York shall be deemed to be in evidence, and that any provisions thereof may be referred to and used by either party, and that the ordinances contained in such publication were at the time of the commencement of this suit, and still are, in full force and effect.

It is stipulated by and between the parties to this suit that although the Adams Ex-

press Company has been employing drivers and helpers and using wagons in the streets of the City of New York in the course of the conduct by it of its interstate business for over 50 years, it has never been compelled by any City officials acting under any statute, ordinance or otherwise to take out a license or licenses for the conduct of its interstate express business, or to employ only licensed drivers for its wagons and vehicles used in such interstate commerce or to conform to any tariff of charges or rates prescribed by any statute or municipal ordinance, and that its wagons and the drivers and helpers employed by it and engaged in interstate business have never been licensed in the City of New York, except that for several years last past about 40 licenses for wagons and drivers have been taken out by the Adams Express Company and license fees thereon have been paid.

It is further stipulated and agreed between the parties that the defendants herein have caused the arrest in the Borough of Manhattan and the City of New York of a driver of the Adams Express Company engaged in driving a wagon of the said company used only in interstate transportation (such driver and wagon being unlicensed), namely, such driver and wagon being engaged in carrying merchandise in transit from Jersey City, New Jersey, to a point within the City of New York on through bills of lading; that at the time of said arrest said wagon had conspicuously marked thereon the following words, to wit: "This wagon carries interstate commerce traffic only," and that the defendants, the Mayor and Police Commissioner of the City of New York, have threatened and intend to arrest other unlicensed drivers of unlicensed wagons belong-

ing to said Adams Express Company, although engaged in interstate commerce and to enforce the ordinances set forth in the bill of complaint herein against the company and all its wagons and drivers.

JOSEPH ZIMMERMAN, called and sworn as a witness on behalf of complainant, testified as follows:
DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. Will you please state your name, age, residence and occupation? A. Joseph Zimmerman; age, 62; residence, New York; I am general manager for the Adams Express Company.

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Q. 2. How long have you been connected with the Adams Express Company, and in what capacities? A. Well, I have been connected with the Adams since January 1st, 1882, as superintendent; later general manager.

Q. 3. And where have your duties been performed? A. All over the United States; that is, wherever the Adams Express Company worked—did business.

Q. 4. Are you the general manager of the whole system? A. I am as to traffic operation and general manager of the New York department.

Q. 5. Prior to your connection with the Adams Express Company in what business were you? A. Well, I have been in express business since 1866, practically all the time, different companies.

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Q. 6. Were you present and did you hear the testimony given by the witness William M. Barrett, the president of the Adams Express Company? A. Yes.

Q. 7. Did you hear his testimony? A. Yes.

Q. 8. And are you able from your knowledge of the business of the Adams Express Company to confirm what he testified to as to the character, extent and manner of carrying on the business of the Adams Express Company? A. Yes.

208 Joseph Zimmerman.

Q. 9. Mr. Zimmerman, will you please explain the facilities—what, if any, facilities the Adams Express Company has at the terminal stations in Jersey City, Weehawken or 48th Street, New York, to provide for accumulation of freight? A. None beyond the current business. We have a pier at Jersey City and warehouse in Weehawken and a warehouse at 48th Street to take care of the Grand Central business, which means our eastern business, New York, New Haven & Hartford.

Q. 10. Is it or is it not necessary to remove the
209 freight from the trains as they come in? A. It is.

Q. 11. And is it the fact that practically all your freight, that is all the express freight, is carried on passenger trains? A. It is.

Q. 12. During the recent strike to what extent was there an accumulation of freight coming to the City of New York?

Mr. Hale: Objected to as irrelevant and immaterial, and this objection is to apply to all inquiries as to conditions growing out of the recent strike; this line of inquiry is also objected to as impertinent to the questions presented by the bill.

A. Beyond the capacity of our pier in Jersey City and our warehouses elsewhere to hold it.

210 Q. 13. Did I understand you to say that you had an accumulation beyond your facilities to take care of? A. Yes.

Q. 14. What, if anything, did the Adams Express Company do to provide for such accumulation? A. We rented a pier in Brooklyn to which we moved the accumulation by floats, and there stored it until we were able to make deliveries.

Q. 15. Have you any warehouses in the City of New York where you can store accumulations of freight that you are unable to move by your wagons? A. No.

Q. 16. In the conduct of the express business to

what extent, if any, is the element of promptness or speed or expedition involved? A. It is indispensable; it must be the promptest in picking up and delivering and transporting.

Q. 17. Can you explain that any further? A. Why, I might say that it means express business, the prompt handling.

Q. 18. Is that the difference in transportation between the freight carried ordinarily by railroads and freight carried by express companies? A. Yes.

Q. 19. During the recent strike did you have any perishable goods spoiled? A. Yes. 212

Q. 20. And what was done with such goods? A. Well, we had to take that to one of the City dumps and throw it away.

Q. 21. To what extent, if any, have claims for perishable goods been made against the Adams Express Company for goods spoiled during the recent strike? A. Well, our records indicate that 500 preliminary letters relating to claims are being investigated.

Q. 22. And do these claims all grow out of the conditions attending the recent strike? A. We think that the investigation will prove that they did.

Q. 23. Will you kindly state briefly the course 213 of business with respect to shipments received from out of the State over the New York, New Haven & Hartford Railroad for points in the City of New York above 59th Street? A. After unloading at 48th Street it is carried to one of two or three places uptown where it is assorted for the different delivery districts, the first one being at 77th Street and Amsterdam Avenue, and others at 106th Street and 124th Street; there it is unloaded, divided as between several delivery districts and sent out on delivery wagons.

Q. 24. Will you state briefly the custom of the Adams Express Company in regard to the collec-

214 Joseph Zimmerman.

tion in the City of New York of packages of money, securities and bullion? A. Why, the money, securities and bullion are required to be brought to one of our offices for receipt, our wagon men not being allowed to receipt for them either at the banks or on the street.

Q. 25. Now, in respect to similar packages of money, securities and bullion arriving from points outside of the State of New York? A. We deliver them by wagons.

Q. 26. Then it is the custom for your wagons
215 and helpers to deliver such valuable packages? A. Yes.

Q. 27. Mr. Zimmerman, are you able to state approximately how many drivers and helpers of the various express companies engaged in interstate business—that is, the Adams, American, National, United States and Wells-Fargo—are employed in the City of New York? A. There are at least 3,000.

Q. 28. And these other express companies that I have mentioned, are they engaged in interstate commerce substantially in the same manner as the Adams Express Company? A. Yes.

Q. 29. Have you caused investigation to be made
216 personally as to how many drivers and helpers of the Adams Express Company now belong to the so-called Teamsters' Union?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial.

A. I did, and my information was at least 90 per cent.

Q. 30. Did you have any personal knowledge as to the number of your men who were members of the Teamsters' Union or any other union prior to the recent strike in October, 1910? A. As to their belonging to unions?

Q. 31. Yes. A. They did not.

Q. 32. Are you able to state whether or not the employees or any large proportion of the employees, that is, the drivers and helpers of the other express companies, do or do not belong to this Teamsters' Union? A. My information is that a large proportion of them do belong.

Q. 33. Have you yourself made any investigation upon this point? A. I made inquiries of the officials of other companies; my answer is based on information given by them.

Q. 34. Mr. Zimmerman, have you any knowledge or experience as to the custom of unions to 218
engage in what are called sympathetic strikes? A. I believe it to be one of their rules; the men joining the Teamsters' Union obligate themselves to go out upon call. In the last case the employees of the different companies went out in sympathy with the first company striking.

Q. 35. Mr. Barrett testified that the employees of the Adams Express Company in the recent strike went out without any notice or demand upon your company. What is your knowledge in regard to that? A. That is the fact.

Q. 36. Mr. Zimmerman, to your knowledge were all the wagons of the Adams Express Company in 219
use in the City of New York in October, November and December, 1910, and at the present time engaged in carrying interstate shipments? A. Yes.

Q. 37. Mr. Zimmerman, is it the fact to your personal knowledge that the service which the Adams Express Company renders through its drivers and helpers and wagons in the City of New York, in the collection, transfer and delivery of packages to and from railroad trains or boats, is part of the service of the express company as carrier on routes for continuous interstate transportation, at indivisible rates on through bills of lading, according to the tariffs and classifications

220 Joseph Zimmerman.

filed with the Interstate Commerce Commission? A. It is.

Q. 38. How many separate tariffs has the Adams Express Company now on file with the Interstate Commerce Commission and in force and effect? A. We have 80 of the character that that represents (indicating paper); this contains over 55 pages; besides which there is another class of 184 tariffs.

Q. 39. Well, are the 80 tariffs that you refer to what are known as merchandise tariffs? A. Mer-
221 chandise tariffs.

Q. 40. And are the 184 that you refer to known as commodity tariffs? A. Commodity tariffs.

Q. 41. Is the paper which you now produce a sample of one of the merchandise tariffs to which you have referred? A. It is.

Q. 42. And to this tariff marked "G" there are attached some 55 pages of figures and items showing the different rates to various points? A. Yes.

Q. 43. And does the size and bulk of this particular tariff now shown you represent approximately the size of the other tariffs which are on file? A. Yes; some of them are not quite as large, but then that is a fair sample.

222 Mr. Guthrie: I offer in evidence the first page of this merchandise tariff marked "G."

Mr. Hale: Objected to as irrelevant and immaterial.

Paper referred to marked Complainant's Exhibit No. 13, J. A. S., Ex'r, January 18th, 1911.

Cross-examination waived.

JOSEPH ZIMMERMAN.

Sworn by me,

JOHN A. SHIELDS,
Examiner.

HENRY PLATT, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your full name, age, residence and occupation? A. Henry Platt; 45 years of age; 83 West 53rd Street, Bayonne, New Jersey; special investigator for Mr. A. C. Vandiver, who is counsel in criminal cases for the Adams Express Company.

Q. 2. How long have you been so employed? A. Pretty near three years.

Q. 3. And are your duties practically confined 224
to investigating cases in which the Adams Express Company is concerned? A. Yes, sir; all investigations that are sent over to Mr. Vandiver.

Q. 4. And you are constantly employed in Adams Express matters? A. Yes, sir.

Q. 5. And you are familiar with their business and employees and wagons in the City of New York? A. Yes, sir.

Q. 6. In November, 1910, did you go under the direction of Mr. Vandiver or any other attorney or officer of the Adams Express Company to the corporation yard at the foot of Rivington Street? A. Yes, sir. 225

Q. 7. Did any one accompany you? A. I went alone and I got there about three o'clock, and I waited at the corporation yard until about five o'clock, when an Adams Express wagon, No. 413, was driven into the yard by two officers.

Q. 8. Two police officers? A. Two police officers.

Q. 9. Was there a driver with it? A. No, sir; and I went to the yardmaster and told him that I was there for the purpose of paying whatever poundage was necessary for the release of the wagon and horses, and he told me that he could not deliver the wagon or horses to me, that I would have to see the superintendent, Mr. Broderick.

226 Henry Platt.

Q. 10. Who is Mr. Broderick, do you know? A. He was the superintendent of the maintenance of sidewalks.

Q. 11. Bureau of Sidewalks of the City of New York? A. Yes, sir, of 13 and 21 Park Row. I asked him if he would call up Mr. Broderick for me, so I could speak to him over the telephone, and he did, and somebody at the other end of the wire told me that I could not get the wagon out that night, that the wagon was in charge of the police department, and that I would have to go to the
227 Eighth Precinct police station and get an order of release from Inspector Daly, which I was to present to the office of the maintenance of sidewalks, in the Park Row Building, who would then issue orders to the superintendent of the yard for the release of the horses and wagon. I again offered to pay poundage for the wagon to the yardmaster and he refused to take it. He said he had to receive his orders from the superintendent before he could release it. The wagon was left in the yard and the horses were taken around to a stable some place on Mangin Street.

The next day, accompanied by Mr. Liebner, we
228 went to the Eighth Precinct police station, and asked for Inspector Daly. Inspector Daly was not in the station house, so some one in command called the police headquarters on the telephone, and somebody answered him, and then after that conversation he told Mr. Liebner and myself that he would give us an order for the release of the horses and wagons that were in the Rivington Street yard. After that the order was made out—the two orders were made out, one for the horses and one for the wagon. The captain was about to hand them to me, and then he changed his mind and told me to wait a minute. He went to the telephone, and before calling he told me he was going to call up the

legal department of the police bureau, and after that conversation he told me to go down to the Adams Express Company and tell the Adams Express Company that if they sent a man over to the Park Row Building with an order directing the wagon to be turned over to the bearer that the Bureau of Sidewalks would issue an order for the release of that wagon and also the same would be done with respect to the horses, but that he was going to send the order for the wagon and the order for the horses direct by some policeman, so that they would be there by the time we got there. I 230
then left the station house. On the 19th, I believe it was the 19th—

Q. 12. Of November? A. Of November, accompanied by Mr. Liebner we went to the Park Row Building with an order from the Adams Express Company, directing the superintendent to turn the wagon over to us. We asked for Superintendent Broderick and a man who said he was Superintendent Broderick asked us what he could do for us. We gave him the order and told him that we came there to get a release for the wagon that was in the Rivington Street yard, and he told us that—
he asked us whether we had a license for the wagon 231
and whether we were licensed drivers. I answered no. He then told us that it was Mayor Gaynor's orders not to turn the wagon over to the Adams Express Company until we had a license for the wagon and that a licensed driver would have to get the wagon from out of the yard. We then left.

Q. 13. To your knowledge is the wagon still in the Rivington Street corporation yard? A. The wagon is still there.

Q. 14. And to your knowledge is that the corporation yard of the City of New York? A. It is.

Q. 15. Who is Mr. Liebner? What is his full

232 Joseph J. Liebner.

name? A. Joseph J. Liebner; he is also an agent for Mr. Vandiver.

Q. 16. And engaged in Adams Express Company business constantly? A. Yes, sir.

Mr. Guthrie: That is all.

Cross-examination waived.

HENRY PLATT.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

JOSEPH J. LIEBNER, called and sworn as a wit-
233 ness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your name, age, residence and occupation? A. Joseph J. Liebner; 26; 350 West 56th Street; special agent for the Adams Express Company.

Q. 2. How long have you been in the employ of the Adams Express Company as special agent? A. About three years.

Q. 3. And are you familiar with its business and wagons and drivers and helpers? A. I am.

Q. 4. Did you hear the testimony of the witness
234 Mr. Platt? A. I did.

Q. 5. And you heard him testify as to an interview with a man representing himself as Superintendent Broderick of the Bureau of Sidewalks? A. Yes, sir.

Q. 6. Do you confirm as correct his statement of what occurred on that occasion? A. I do.

Mr. Guthrie: That is all.

Cross-examination waived.

JOSEPH J. LIEBNER.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

HERMAN BREMER, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. State your name, age, residence and occupation? A. Herman Bremer; 45 years old; 332 East 51st Street; inspector of wagon service.

Q. 2. You are in the employ of the Adams Express Company? A. Yes, sir.

Q. 3. How long have you been in such employ? A. 27 years.

Q. 4. And have your duties been in the City of New York? A. Yes, sir. 236

Q. 5. Do you know that there is a corporation pound or yard of the City of New York in 56th Street? A. In 55th Street.

Q. 6. In 55th Street? A. Yes, sir.

Q. 7. Have you any knowledge of the arrest and impounding in November, 1910, of any wagons of the Adams Express Company? A. Yes, sir.

Q. 8. What knowledge have you on the subject? A. I was sent there to get the horses out from the livery stable.

Q. 9. You were sent to the yard in 55th Street? A. No, I was sent to the livery stable to get the horses out first. 237

Q. 10. And where were the horses? A. In Doyle's livery stable; I believe it was Doyle's in 55th Street, between Tenth and Eleventh Avenues.

Q. 11. Won't you please tell as briefly as possible what occurred? A. Well, I received an order from 309 Canal Street, also $16, I believe, I am not sure of the amount—to go to Doyle's and take out those four horses.

Q. 12. Were four horses of the Adams Express Company at Doyle's livery? A. Yes, sir.

Q. 13. And do you remember the date when you went there? A. I believe it was on the 13th.

Q. 14. Of November of last year? A. Yes, sir.

238 Herman Bremer.

Q. 15. And you found four horses of the Adams Express Company there? A. Yes, sir.

Q. 16. Did you get those horses? A. Yes, sir.

Q. 17. Did you have to pay anything and if so how much? A. I believe $16.

Q. 18. To whom did you pay that? A. To a lady, to an old lady.

Q. 19. In charge of the stable? A. Yes, in charge of the stable.

Q. 20. And were you given the receipt that I now show you? A. I believe it was a receipt like this.

239 Q. 21. Is that to the best of your recollection the receipt that was given to you at the time in payment of that $16? A. I think $16.

Mr. Guthrie: I offer that in evidence.

Paper referred to marked Complainant's Exhibit No. 14, J. A. S., Ex'r, January 18th, 1911.

The Witness: I wasn't the only one that went there, you know.

Q. 22. Who accompanied you? A. The stable foreman, Mr. Hogan, 56th Street stable; has charge of the stable.

240 Q. 23. You mean the stable of the Adams Express Company? A. Yes, sir.

Q. 24. Have you any personal knowledge as to how those Adams Express Company horses came to be in Doyle's stable? A. No, sir, I haven't.

Q. 25. Did you go to the pound or yard at any time in regard to the wagons there? A. I did, yes, sir.

Q. 26. When did you do that? A. On the 15th or 16th; I am not sure of the date.

Q. 27. That would be the 15th or 16th of November? A. I think the 14th or 15th, I am not sure.

Q. 28. Of November of last year? A. Yes, sir.

Q. 29. And what did you do there? A. I went there to get out these two wagons, Nos. 388 and 494,

and I was told that there was $10 apiece on each wagon.

Q. 30. Well, you found there in the corporation yard or pound two wagons of the Adams Express Company? A. Yes, sir.

Q. 31. Had you any personal knowledge as to how long they had been there? A. No, sir, I had not.

Q. 32. And whom did you see there? A. The man in charge of the yard; I don't know what his name was.

Q. 33. And did you demand from him the de- 242
livery to you of those wagons? A. Yes, sir, I went to the 51st Street station house and an officer was sent along with me to get those wagons out, and when we got there I was told there was $10 apiece on these wagons and I couldn't get them without the money.

Q. 34. Did you then pay the money? A. No, sir,

Q. 35. What did you next do? A. I notified our office, 309 Canal Street, there were $10 due on each wagon.

Q. 36. And then what did you do, if anything? A. Then I went back to the office.

Q. 37. Well, now, did you ever return to the
pound, and if so when? A. Yes, sir, about two 243
o'clock in the afternoon of the same day, when I called for these wagons.

Q. 38. And were you then also accompanied by a policeman? A. No, sir, not the second time.

Q. 39. And what occurred then? A. I got out the wagons.

Q. 40. Did you make any payment? A. I did not, no, sir, it had already been paid.

Mr. Guthrie: That is all.

No cross-examination.

H. BREMER.

Sworn by me,

JOHN A. SHIELDS,

Examiner.

244 Thomas O. Baker.

THOMAS O. BAKER, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. What is your name, age, residence and occupation? A. Thomas O. Baker; age, 29; residence, 256 Fifth Street, Jersey City; occupation, clerk, Adams Express Company.

Q. 2. How long have you been in the employ of the Adams Express Company? A. 12 years, with the exception of one month that I was out.

Q. 3. And are you acquainted with its business,
245 its wagons, drivers and helpers? A. To a certain extent.

Q. 4. What are your duties as clerk? A. I might as well explain that; I can explain that in very short order. About two months ago I was out for a month, when I returned I was put on the extra list, headed up as clerks; the duty of them is to do anything that the superintendent or chief inspector details them to. We are not carried on the regular clerk roll, we are carried on an extra clerk roll.

Q. 5. Now, on November 15th, 1910, did you have occasion to go to the corporation yard or
246 pound of the City of New York in 55th Street? A. No, sir.

Q. 6. Did you go to the Bureau of Sidewalks of the City of New York about that date? A. Yes, sir.

Q. 7. Now state what you did there on November 15th? A. In the morning I was given a memorandum with three numbers of wagons on it—Nos. 388, 494 and 413—and was told to go to Park Row and get permission to get them out. I went to Park Row—the correct number I believe was 21.

Q. 8. To the Bureau of Sidewalks of the City of New York? A. Yes, sir.

Q. 9. Bureau of Sidewalks and Incumbrances of

the City of New York? A. There is two bureaus; I went there, one was the Bureau of Incumbrance and the other was the Bureau of—I don't know—I seen street men coming in there with their hats on—highways, I think they called it, or something,—Bureau of Highways.

Q. 10. And now state what occurred. A. The Bureau of Highways, or whatever you call it; they gave me two wagons—they had two wagons there; they gave me a receipt, and I paid them $15; they gave me a receipt for the two wagons that were in 56th Street; they released them—that was for 248
the receipt, and that released the wagons.

Q. 12. State what occurred in regard to that in your conversation with the gentleman who was in charge of that office, in regard to the amount to be paid? A. I went in and I told them that I was from the Express Company and I had the money with me and I would like to get permits or whatever was necessary; we wanted to get our wagons; we had three wagons in the pound; the gentleman there referred to a large book he had and he said "I have only two." I said, "There must be three; I have it on the list here." And he looked there and he said there was $15, and I said I guess I 249
would have to pay him, and I gave him the money.

Q. 13. And did he give you a receipt for the amount? A. Yes, sir.

Q. 14. And is that the receipt which he gave you at the time? (Showing witness) A. Yes, sir, one just like that.

Q. 15. And the two wagons referred to in this receipt were the two wagons in the 56th Street pound or yard? A. Yes, sir, pound or yard.

Mr. Guthrie: I offer that in evidence.

Paper referred to marked Complainant's Exhibit No. 15, J. A. S., Ex'r, January 18th, 1911.

250 Thomas O. Baker.

Q. 16. Did you make any application at the same time for any other wagon? A. Yes, sir.

Q. 17. What occurred then? A. I says, where will I find out about the other wagon? He says—the gentleman there said wait a minute, I will see if I can help you. He got on the 'phone and 'phoned to somebody; then he asked me upstairs to see a Mr. Tolson or Telson, chief engineer upstairs. So I went around—when I first went to Mr. Tolson's office the gentleman there told me you had better see—he gave me a name that I can't recall; I
251 told them that I wanted to get a wagon, and whatever the charges were on it I would pay the money, and they told me you had better go around and see him. I went around to Mr. Tolson, the chief engineer, in the farthest office towards Broadway——

Q. 18. In what building? A. In the same building.

Q. 19. That is the building where the Bureau of Street Cleaning is? A. Yes, sir, if I remember correctly; and when I went around the second time they let me in; I went through one room and then there was a little bit of anteroom, and I went in
252 there and he had a table in there, and I sat down and talked to him about it, and he done quite a lot of—shook his head and wouldn't comment on it, he wouldn't have much to say; and I said, do you think if I went over and saw Mr. Oliver—somebody suggested that to me——

Q. 20. Who is Mr. Oliver? A. Why, I understood he had something to do with the license——

Q. 21. License Bureau? A. Yes, sir, License Bureau, over in the basement in City Hall. So I went over there and Mr. Oliver wasn't in, and some other gentleman there, he wouldn't say yes or no, or nothing; so I went—asked him where is the Mayor's

office, I will go up and see him; I said I am sent here to try to get the wagon out; all I want to do is to get the wagon out; and I went upstairs and there was one room, and I sat there for quite a while, and there was an officer there and he asks me what I wanted, and I told him I wanted to see the Mayor or his secretary or one of them, and after a while he led me in a place, and there was only one man at a desk in the room, I don't know what his name is, and we had a talk over it, and he says I don't know, but I would suggest that you get a license out for that wagon and bring a licensed 254
driver, and he says, I think you can get it.

Q. 22. Do you know the name of the person with whom you had this conversation? A. No, sir, I couldn't say that.

Q. 23. Was it in the Mayor's office or in the building where the Mayor's office is? A. Yes, sir.

Q. 24. In the City Hall? A. Yes, sir.

Q. 25. And you were shown by somebody in charge into this room? A. Yes, sir, by an officer.

Q. 26. By an officer? A. Yes, sir.

Q. 27. And you explained your wants to this man who was sitting at the desk? A. Yes, sir.

Q. 28. And he made the statement to you that you have just testified to? A. Yes, sir. 255

Q. 29. Did you ask for anybody, to see anybody, other than the Mayor? A. No, sir, the only thing I asked for is—I saw his chief clerk or secretary.

Q. 30. To the Mayor? A. To the Mayor.

Mr. Guthrie: That is all.

No cross-examination.

THOMAS O. BAKER.

Sworn by me,

JOHN A. SHIELDS,
Examiner.

256 It is stipulated and agreed that the wagon detained at the Rivington Street corporation yard was drawn by two horses, that these horses were sent by the police officers to the Mangin livery stable, and that the Adams Express Company paid $14 board on the release of those horses to them.

Mr. Guthrie: I offer in evidence the receipt by the Mangin Livery Stable for $14 board paid by the Adams Express Company on the release of the horses.

Paper referred to marked Complainant's Exhibit No. 16, J. A. S., Ex'r, January 18th,
257 1911.

Adjourned to Friday, January 20th, 1911, at 2.30 o'clock P. M., at the same place.

NEW YORK, January 20th, 1911, 2.30 P. M.

Met pursuant to adjournment.

Present: Counsel as before.

It is admitted between the parties, for the purposes of this case, that there are several thousand horse-drawn wagons and motor vehicles which use the streets of the City of New York, but which
258 wagons and vehicles and the drivers thereof are not licensed; that the City of New York has never taken any steps by ordinance or otherwise to compel the licensing of such wagons and vehicles or the drivers thereof; that such wagons and vehicles are employed in other businesses than that of expressmen or common carriers and are used in transacting for profit the business of their owners; that included in these wagons and vehicles are those employed by department stores, brewers, warehousemen, iron makers, grocers, coal dealers, builders, contractors and manufacturers; that the total number of wagons and vehicles of this class

which are not licensed greatly exceeds the number of wagons and vehicles used in the City of New York belonging to interstate express companies and engaged in interstate transportation, and that the number of vehicles required to be licensed under the existing ordinances of the City of New York is small relatively to the total traffic in the streets.

Mr. Guthrie: I offer in evidence one of the forms of license issued by the Buerau of Licenses of the City of New York in respect of the 40 wagons referred to in Exhibits 10 and 11. 260

Paper referred to marked Complainant's Exhibit No. 17, J. A. S., Ex'r, January 20th, 1911.

It is admitted, subject to correction, that this was the form of license in use in the Bureau of Licenses of the City of New York on its date, March 14th, 1910, and that the same form substantially is in use at the present time.

CHARLES GORDON MACKAY, called and sworn as a witness on behalf of the complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE: 261

Q. 1. State your name, age, residence and occupation? A. Charles Gordon MacKay; 25 Linden Avenue, Jersey City; age, 45; general agent, New York, Adams Express Company.

Q. 2. How long have you been in the employ of the Adams Express Company? A. Over 30 years.

Q. 3. Will you state briefly in what capacities? A. Wagon boy, driver, messenger, clerk, agent, inspector, assistant to the general manager and assistant to the general agent—I have been nearly everything up to my present position.

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Q. 4. Have your duties mostly been in the New York department? A. Yes.

Q. 5. Have you caused to be prepared a statement of the amount of business done by the Adams Express Company in the City of New York from October 27th to November 16th, 1910, and a similar statement in regard to the businesses done in 1909 and 1908? A. Yes, sir.

Q. 6. Is the paper which I now show you a correct statement to your knowledge of the business done by the Adams Express Company at the dates
263 stated on that paper? A. Yes, sir.

Mr. Guthrie: I offer that in evidence.

Mr. Hale: Objected to as irrelevant and immaterial, and as not the proximate consequence of any act of the City or for which the City is chargeable.

Paper referred to marked Complainant's Exhibit No. 18, J. A. S., Ex'r, January 20th, 1911.

Q. 7. Have you caused to be prepared a statement showing the revenue of the Adams Express Company in the City of New York derived from its interstate packages for the various months in the year 1910 and also a similar statement as to
264 the years 1909 and 1908? A. Yes, sir.

Q. 8. And is the paper which I now show you a correct tabulation of the receipts of the Adams Express Company from its interstate business? A. Yes, sir.

Q. 9. In the City of New York? A. Yes, sir.

Mr. Guthrie: I offer that in evidence.

Mr. Hale: Objected to as irrelevant and immamaterial.

Paper referred to marked Complainant's Exhibit No. 19, J. A. S., Ex'r, January 20th, 1911.

Q. 10. Have you made a calculation in order to ascertain what the business of the Adams Express Company in the City of New York from interstate commerce should have been according to the normal increase of the business?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as calling for a mere guess or estimate of the witness.

A. Yes, sir.

Q. 11. Is such estimate or calculation based upon the exhibits which have been offered in evidence? A. Yes, sir.

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Q. 12. What would have been the normal amount of business which the Adams would have done in November and December, 1910, according to such normal increase?

Mr. Hale: The last objection is repeated.

A. Well, between 900,000 and a million dollars in October, November and December.

Q. 13. Will you please state what effect, if any, the cessation of business in New York or the inability to collect and deliver packages in New York has upon the business of the express company at other points?

M. Hale: Objected to as irrelevant and immaterial, as calling for a mere conclusion of the witness and as assuming facts not proved.

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A. It would reduce their business by nearly all the normal quantity that is sent to New York and by nearly all the normal quantity that is dispatched from New York.

Q. 14. Are you familiar with the wagons of the Adams Express Company? A. Yes, sir.

Q. 15. In what way are the wagons of the Adams Express Company marked? A. They are marked

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with a sign on each side reading, in large gold letters, "Adams Express Company," and immediately underneath they have "Southern Express Company," with also a number on each wagon.

Q. 16. In fact all the wagons of the Adams Express Company are plainly marked with the name of the express company? A. Yes, sir.

Q. 17. And they all have a number, have they? A. Yes, sir.

Q. 18. Will you state what is the general character of the wagons of the Adams Express Company
269 in use in the City of New York? A. I don't know that I just understand that question, Mr. Guthrie.

Q. 19. Well, you have about how many single horse wagons? A. Oh, well, we have probably 125 single horse wagons, about 90 to 95 automobiles, and between 250 and 300 double wagons.

Q. 20. Are the automobiles and the chauffeurs licensed by the State? A. Yes, sir.

Q. 21. These single horse wagons are of what general description? A. Well, they are small express wagons, capable of carrying something less than a ton.

Q. 22. Are they similar to the wagons in use by
270 the department stores of the City of New York? A. Yes, sir.

Q. 23. Are they also similar to the wagons in use by grocers and other merchants and dealers in the City of New York?

Mr. Hale: Objected to as calling for a mere opinion of the witness.

A. Yes, sir.

Q. 24. Are you familiar with the character of the delivery wagons in use by the large department and dry goods stores in the City of New York? A. Yes, sir.

Q. 25. Have you had frequent occasion to examine them? A. I see them in the streets every day in my life.

Q. 26. And are the single horse wagons in use by the Adams Express Company similar in construction to these wagons of the department stores and grocers and others? A. Yes, sir.

Q. 27. Now, your two horse wagons: What is their general character? A. Well, they are ordinary double express wagons, such as are used by our company and like those of the same general character as used by persons in the trucking and 272
dry goods business.

Q. 28. To your knowledge are they similar in construction to wagons in use by the department stores and dry goods merchants?

Mr. Hale: Objected to as calling for a mere opinion.

A. Yes, sir.

Q. 29. And also similar to wagons in use by grocers and other dealers in the City of New York? A. Yes, sir.

Q. 30. In general weight how do these two horse wagons compare with the wagons in use by grocers and contractors and manufacturers? A. Well, 273
they are probably lighter in the general run.

Q. 31. They are smaller than the brewery wagons, are they not? A. Oh, my, yes.

Q. 32. How do they compare with the wagons used by iron makers and contractors? A. Well, they are smaller and lighter wagons than they would have in general use in that line of business.

Q. 33. To your knowledge have any bonds ever been given by the Adams Express Company to the City with respect to any of its wagons or drivers

engaged in interstate commerce, and if so, to what extent?

Mr. Hale: Objected to as irrelevant and immaterial.

A. Only in so far as it relates to the 40 wagons that were licensed last year.

Q. 34. Were you aware at the time of the arrangement made with the Bureau of Licenses by your counsel, Messrs. Cravath, Henderson & de Gersdorff, and recited in the Exhibits 10 and 11? A. They told me of it.

275 Q. 35. And it was in pursuance of that that these bonds were given? A. Yes, sir.

Q. 36. And bonds were given for only the 40 wagons? A. That is all.

Q. 37. Were any bonds given for any of the other wagons of the Adams Express Company at any time? A. No, sir.

Q. 38. Have the wagons or vehicles of the Adams Express Company ever been inspected by the Bureau of Licenses or other department of the City of New York? A. No, sir.

Q. 39. And have the 40 wagons for which licenses were taken out been inspected? A. No, sir.

276 Q. 40. Were the premises of the Adams—any of the stables or other premises of the Adams Express Company ever inspected? A. No, sir.

Q. 41. Mr. MacKay, have you made an investigation to ascertain what would be the effect if you were to separate and conduct separately the local business as distinguished from the interstate business of the Adams Express Company in the City of New York?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as calling merely for an opinion and the prediction of the witness.

A. I outlined a plan several days ago, and found that the probable cost would exceed what we know to be the revenue now.

Q. 42. Will you please briefly describe the character of the automobiles that the Adams Express Company has in the City of New York? A. We have some gasoline cars that are capable of carrying a load of three tons, some that can carry two tons, some that will carry a ton and a half, and also a number of two ton and one ton electrics.

Q. 43. How do these compare in size and character with other similar vehicles in use for business 278
purposes in the city? A. Well, I judge they are for the same purpose, they are the same kind of a car that people buy from the same manufacturers that we do.

Q. 44. There are to your knowledge a large number of similar vehicles in use in the City of New York? A. Yes, sir.

Q. 45. In the various businesses? A. Yes, sir.

Q. 46. To your knowledge have the department stores a number of such vehicles? A. Yes, sir.

Q. 47. And does the same apply to grocers and other merchants? A. Yes, sir.

Q. 48. To what extent does the business of the 279
Adams Express Company consist of the carriage to the City of New York of perishable freight? A. The perishable freight is a very large percentage of our inbound business.

Q. 49. And what does that freight consist of generally? A. Well, some dressed meat, vegetables, fish—well, that is the bulk of it.

Q. 50. And you also carry milk? A. Not a great deal.

Q. 51. Do you carry eggs? A. Yes.

Q. 52. What is the effect or result of delay in respect of such freight? A. It spoils or deterio-

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rates, or so near to that, that almost the entire value of it is lost.

Q. 53. What would be the effect of a delay of 24 or 36 hours in the delivery of such freight? A. Well, it would mean that we would have to pay out nearly the entire value of it in claims.

Q. 54. During the period of the recent strike from October 27th to November 16th, did you receive perishable freight? A. Yes, sir.

Q. 55. To what extent, if any, was that freight spoiled or destroyed?

281 Mr. Hale: Objected to as irrelevant and immaterial and not a matter with which the City is in any way chargeable.

A. Why, we had probably two or three carloads that had to be thrown out as useless, spoiled, and approximately 10 carloads that had to be sold here or sent to other cities and sold at forced sale; in other words, to take what we could get for it.

Q. 56. Did any part of this perishable freight coming to New York have to be sold here, and if so, under what circumstances?

Mr. Hale: The same objection.

A. We placed a quantity of it on barges and sent it to Brooklyn to be sold.

282 Q. 57. Did you also ship back any perishable freight, and if so, to what extent? A. We shipped back several carloads to Philadelphia from Jersey City, and to New Haven and Bridgeport from our depot at 48th Street and Madison Avenue, and we also sent back from our depot at Weehawken a very considerable quantity of freight to points on the Ontario & Western Road.

Q. 58. What was the reason or cause for your sending or having it sent back, these shipments? A. We couldn't make delivery here.

Q. 59. Is it practicable or possible to carry on

the interstate express business of the Adams Express Company without the use of wagons in the City of New York for collecting and delivering packages?

Mr. Hale: Objected to as irrelevant and immaterial, and because the City is in no way chargeable with the results of the recent strike.

A. No, sir.

Q. 60. Mr. Zimmerman testified that a number of claims growing out of the recent strike had been presented to the Adams Express Company. Have you personal knowledge of any facts in relation to 284
that, and if so, please state them?

Mr. Hale: Objected to as irrelevant and immaterial, and this objection is to apply to all questions touching upon the recent strike and its consequences.

A. I have personal knowledge of the fact that we received in our claim bureau more than 500 claims which are either directly or indirectly chargeable to strike conditions, and a record of inquiries made in our correspondence bureau indicates that we will have a couple of thousand or more additional claims.

Q. 61. Did you have personal knowledge of the 285
recent strike in October and November, 1910? A. Yes, sir.

Q. 62. Prior to the men going out on strike, did you or did any of the officers of the company, so far as you know, have any knowledge of their intention? A. No; I don't believe they had any intention.

Q. 63. What do you mean by that last statement? A. Why, I mean the men were not organized until after they had struck, and then it took them all of one day to make up their minds just what they were going to do.

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Q. 64. But prior to their going on strike had you or any officer of the Adams Express Company, so far as you know, any notice or information of the proposed strike? A. No, sir.

Q. 65. Had any demands been made upon you for redress of any kind? A. Not a word.

Q. 66. How many of your men went out on strike in this manner? A. Well, between a thousand and fifteen hundred.

Q. 67. Did you make any efforts to secure drivers or helpers in their place in the City of New York?
287 A. Yes, sir.

Q. 68. Will you please state what you did? A. Well, we advertised and made personal—at least made search through our representatives, but we did not succeed in securing any men.

Q. 69. When you say you advertised, in what papers? A. In the daily papers. I can't name them, but I can find out what they were.

Q. 70. And was it an advertisement for drivers and helpers? A. Yes, sir.

Q. 71. And with what result? A. Practically no result.

Q. 72. Well, did any applications come as a result of the advertisement? A. We had 18 people
288 one day that I recall.

Q. 73. And how many drivers or helpers were you able to get out of those 18? A. Well, we didn't get more than four or five.

Q.74. From your experience are you able to say whether it would be practicable to secure six or seven hundred drivers competent to drive your wagons either as drivers or helpers in the City of New York on short notice?

Mr. Hale: Objected to upon the further ground that it calls merely for the opinion of the witness.

A. Well, I believe—I am sure we could not get them.

Q. 75. You some time ago testified that several carloads of perishable freight had been thrown out. What did you mean by that expression? A. Well, I meant that some of it was taken by the Health officers and some was carted to dumping grounds.

Q. 76. And dumped there? A. Yes.

Q. 77. Has the Adams Express Company any storage or warehouse facilities in Jersey City or Weehawken or in New York for the storage of freight that may accumulate as the result of inability to deliver in the City of New York? 290

Mr. Hale: Objected to as assuming a fact not shown to exist and for which the City is not responsible.

A. No, sir.

Q. 78. In the ordinary conduct of the business of the express companies in the City of New York is there any call or necessity for such storage or warehouse facilities? A. No, sir.

Q. 79. Can you explain why not? A. Why, yes; if we stored goods we would not be in the express business. We have to take them and deliver them immediately. We deliver 24 hours a day where we can. 291

Q. 80. And are the goods which you receive on the passenger trains as testified to taken immediately from the trains and then delivered? A. Yes, sir.

Q. 81. And the same applies to the goods that you collect in the City of New York: They are taken immediately and put on trains for shipment to other points? A. Yes, sir.

Q. 82. And is it the fact that the gist of the express business is this promptness and expedition of collection and delivery? A. Yes, sir.

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Q. 83. What knowledge have you of the seizure and impounding during the recent strike of any wagons of the Adams Express Company in the City of New York, or of the arrest of their drivers by the police, whilst the wagons and drivers were engaged in interstate commerce? A. Late in the afternoon of November 9th our wagon No. 388—it was loaded with five boxes from Danbury, Connecticut, going to the Panama Railroad Commission, I think the commissary department. The goods were held in, I think, the 51st Street station house until they
293 were returned to us. On the same day our wagon 413, carrying a couple of hundred packages from various points in the south and west, was seized by the police and the wagon was eventually taken to the Rivington Street yard.

Q. 84. What became of the freight on the wagon? A. Well, now, I can't cover that point clearly; I am sure it was taken to a police station, but I can't state of my own knowledge.

Mr. Hale: I object to the statement of what the witness is sure of unless it is within his personal knowledge; the witness is requested to confine himself to what he personally knows.

Q. 85. Were you given any information as to
294 the disposition of the packages in that wagon, and if so by whom and in what manner?

Mr. Hale: Objected to as calling for hearsay.

Q. (Continued) What did you do? A. I can't answer the question with regard to that particular wagon without referring to my notes.

Q. 86. You might refer to them. (Witness refers to notes) Were these notes made by you at the time? A. They were made by either myself or one of my staff; we all sat at a table and received the telephone reports; sometimes I wrote as I received

by telephone and sometimes called to a man alongside of me.

Q. 87. And then he would enter it in this book that you have? A. Yes, and he wrote as I spoke.

Q. 88. And the entries made were made at the time, to your own knowledge? A. Yes, sir.

Q. 89. Now, you might refer to these notes and let us know what happened in regard to the contents of that wagon that was taken to the Rivington Street yard?

Mr. Hale: I object to the statement of any telephone messages from unknown and unnamed persons to this witness, pure hearsay, and unsworn declarations not binding upon the defendant 296

A. (Referring) The freight was taken to the 11th Street station.

Q. 90. Did you communicate in respect of that freight with any official of the City or any member of the police force, and if so with whom? A. My notes do not show, and I cannot say just what we did in this particular case.

Q. 91. Well, is there any case of the seizure or impounding of a wagon of the Adams Express Company that you recall? A. Yes, sir.

Q. 92. What was the number of that wagon? A. On the same afternoon we had wagon 494 en route from our Furman Street depot in Brooklyn to our 42th Street depot in New York, loaded with 131 pieces of freight. The wagon was seized by the police and the goods placed in the 51st Street station house where they remained all night and all the next day. 297

Mr. Hale: I object to the answer as obviously hearsay, and request the witness to state whether he knows those facts of his own knowledge.

The Witness: I didn't see them; they were reported to me.

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Mr. Hale: The motion to strike out the answer is renewed.

Q. 93. Did you give any instructions to any one, and if so, to whom, in regard to the packages of freight which you have testified were in either of these police stations? A. I talked with Mr. Vandiver.

Q. 94. Did you give any instructions to any one, and if so, to whom, in regard to the removal of such freight?

Mr. Hale: Objected to as relating to a transac-
299 tion between employees of the Adams Express Company to which the City and other defendants are strangers and by which they are not bound.

A. I gave instructions to Noble, our agent at the 48th Street depot; I also gave instructions to Minard, the man who accompanied the shipments.

Q. 95. What became of the wagons, if you know? A. Yes; wagons 388 and 494 were taken to the 56th Street corporation yard; wagon 413 was taken to the corporation yard at Rivington Street, where it now is.

Q. 96. Did you give any instructions to any one and if so to whom to secure the release of those
300 wagons? A. Yes, sir.

Q. 97. To whom? A. I gave instructions to one of our wagon inspectors named Bremer and another one named Baker, and also to Liebner and Platt of Mr. Vandiver's staff.

Q. 98. And did you supply them with money to pay the poundage on the wagons and the board of the horses? A. We paid $15 poundage for the two wagons we got and we paid—I can't state the exact sum we paid for the board of the horses; I think I have that in a memorandum, though.

Q. 99. Can you recall the names of the drivers

and helpers on these three wagons? A. I have a memorandum of that; I can't recall the names.

Q. 100. And were they arrested at the time of the seizure of the wagons? A. They were arrested, but they were not detained any further than the police station.

Q. 101. Did you personally communicate with any official of the City of New York in regard to the release of this freight or these wagons and the horses by telephone or otherwise? A. I don't think I did—I did write.

Q. 102. To whom? A. That I can't say until I 302
look over my copies.

Mr. Guthrie: That is all.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 103. Who attends to the employment of the drivers and helpers of the wagons used in the city? A. The superintendent of wagon service, or his assistant.

x-Q. 104. And who is he? A. Charles E. Wilson is the superintendent of wagon service; Robert H. Peterson is the assistant—chief inspector, I should have said, chief inspector of wagon service.

x-Q. 105. Are you at all familiar with that branch
of the business? A. Yes, sir. 303

x-Q. 106. Is there a waiting list of applicants for employment? A. No, sir.

x-Q. 107. How is it kept up? A. He receives applications from day to day.

x-Q. 108. And what does he do with them? A. Hires them when he needs them; if not, tells them to call again.

x-Q. 109. And doesn't keep a list of applicants? A. Perhaps I had better qualify and say I don't think he does.

x-Q. 110. What is your best information and

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belief on that subject? A. I don't think he keeps any list.

x-Q. 111. No reason to think otherwise? A. No.

x-Q. 112. You have testified that in your opinion the company could not obtain several hundred drivers upon short notice. What were the conditions that you had in mind in making your answer? A. Well, the condition that I had in mind is we would have to produce several hundred drivers in a short space of time, if I understand your question properly.

305 x-Q. 113. What do you mean by short space of time? What period? A. Well, a day or two.

x-Q. 114. And do you mean that under no circumstances could the company obtain the services of, say, 200 drivers within a day or two? A. They could obtain them all right, but I don't think they could obtain them here in the city.

x-Q. 115. Why not? What leads you to doubt it? A. Well, the experience I have just had.

x-Q. 116. You mean the experience during the late strike? A. Yes, sir.

x-Q. 117. Have you had any other experience in that line upon which you based your answer? A.

306 Well, our applicants do not come in so rapidly as that ordinarily.

x-Q. 118. Have you any information as to the number of daily applicants for employment to your company? A. Not just now.

x-Q. 119. What information have you recently had upon that subject? What is your last information? A. Well, I haven't had any direct information.

x-Q. 120. Was all your information in regard to the arrests and the impounding of the wagons derived by you over the telephone in the manner described? A. Yes.

Mr. Hale: I now move to strike out all the testimony of this witness with reference to the seizure and impounding of wagons upon the ground that the same is mere hearsay and not within the knowledge of the witness.

x-Q. 121. Why is the name "Southern Express Company" painted upon your wagons in addition to the name "Adams Express Company?" A. We are the northern connection of the Southern Express Company.

x-Q. 122. And handle their business as it comes north? A. Yes, sir. 308

x-Q. 123. How does the number of express wagons in daily use in the city compare with the number of wagons used in the iron business, for example? A. That I can't tell you.

x-Q. 124. How does the weight of the average express wagon used in the City compare with the weight of the average grocer and butcher wagons to which you have referred? A. Well, I should class them—well, that is a hard question to answer.

x-Q. 125. As a matter of fact, the grocer and butcher wagons are in a way far much lighter wagons than the average express wagon, isn't that correct? A. The grocer and butcher wagons used 309 for retail trade are, but the grocer and butcher wagons used for wholesale trade are not, they are heavier.

x-Q. 126. And how does the number of butcher and grocer wagons used in the wholesale trade compare with the total number of express wagons in daily use in the City? A. I don't know.

x-Q. 127. How does the number of express wagons in daily use compare with the delivery wagons of department stores, if you know? A. Well, I don't know, but I should judge there are as

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many department store wagons if not more than there are express wagons.

x-Q. 128. And how do these wagons compare in weight? A. I should judge they are about the same class of wagons.

x-Q. 129. Are you speaking of the one or two horse wagons? A. Well, of both.

x-Q. 130. How do the heavier class of wagons used by the department stores compare in number with the heavier class of express wagons? A. Probably there are more express wagons, heavier.

311 x-Q. 131. Referring now to the memoranda prepared under your direction and marked Exhibits 18 and 19, how were these memoranda prepared and from what sources? A. They were prepared in our cashier's office, from the revenue returns.

x-Q. 132. What do these various sums in dollars contained in these exhibits represent or stand for? A. The money that we have collected.

Mr. Guthrie: For freight?

The Witness: For freight charges.

x-Q. 133. That is to say it represents gross receipts for freight charges on matter originating in New York? A. In and out of New York.

312 Mr. Hale: That is all.

REDIRECT-EXAMINATION BY MR. GUTHRIE:

Rd-Q. 134. You have been asked in regard to the ability to get men in the City of New York to man your wagons. Will you please state whether it would be practicable to procure men from other places than New York, and if so what could be done in that respect? A. I think it would be practicable; I think we could man our wagons in very likely less than two days.

Rd-Q. 135. Would it be practicable to transfer

to New York drivers and helpers employed in other cities? A. Temporarily, yes.

Rd-Q. 136. You were asked whether in testifying that it would be difficult to employ on short notice a large number of men in the City of New York, whether you had any particular time in mind. Would your testimony as to the difficulty in procuring men apply to the present time when no strike is pending? A. Oh, we can get plenty of men now for our purpose from day to day, there is no trouble about that.

Rd-Q. 137. But if you had now under present 314
conditions to supply seven or eight hundred men would that be practicable? I mean if your present drivers should strike to-morrow, would it be practicable to supply their places in the City of New York within a day or two?

Mr. Hale: Objected to as leading.

A. No, sir.

Rd-Q. 138. I understood you to state that under no circumstances could the company obtain the necessary number of drivers in the City of New York within a day or two. Would that condition apply to-day if there should be a strike at once, now?

315

Mr. Hale: Objected to as incorrectly summarizing the testimony.

A. We couldn't get them in the City of New York within a day or two.

Rd-Q. 139. You were asked if your information in regard to the seizure and impounding of your wagons and freight in your charge by the police came to you by telephone and you answered yes. Did you have any other information communicated to you on the subject other than by telephone? A. I had personal reports later, but I understood Mr.

Hale's question to relate to the report that they made at the time.

Rd-Q. 140. But you had personal reports later from employees of the Adams Express Company? A. Yes, sir.

Rd-Q. 141. And you were in charge as the superior officer of that branch of the business, were you not? A. Yes, sir.

Rd-Q. 142. Did the drivers who were on those wagons Nos. 388, 413 and 494 report to you?

Mr. Hale: Objected to.

317 A. No, sir.

Rd-Q. 143. Did any of them? A. No, sir.

Rd-Q. 144. Who did report to you? A. The report was made by Mr. Noble, Mr. Wilson and Mr. Vandiver.

Rd-Q. 145. Who is Mr. Noble? A. Mr. Noble is agent of our 48th Street depot.

Rd-Q. 146. And what is his full name? A. James S.

Rd-Q. 147. And he is in charge of the 48th Street depot? A. Yes, sir.

Rd-Q. 148. And Wilson? A. Is the superintendent, wagon superintendent.

Rd-Q. 149. To whom you have already referred?

318 A. Yes, sir.

Rd-Q. 150. And where is his place? A. 309 Canal Street.

Rd-Q. 151. And Vandiver is the counsel in charge of criminal cases for the Adams Express Company? A. Yes, sir.

Rd-Q. 152. And these three made reports to you? A. Yes, sir.

Rd-Q. 153. As to the seizure and impounding of these three wagons?

Mr. Hale: I object to the statement of the con-

tents of these reports either in the question or by the witness.

Rd-Q. 154. Well, then, state what information you got from Mr. Noble, for example, in regard to the seizure or impounding of any wagons of the Adams Express Company during the recent strike?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as calling for hearsay and the declaration of one not authorized to bind the defendants as to a past transaction.

A. Mr. Noble told me of the seizure of wagon 388, and also of the seizure of wagon 494. 320

Rd-Q. 155. And now, did you give him instructions in respect thereto? A. Yes, sir.

Rd-Q. 156. Who informed you in regard to the seizure of wagon 413? A. Mr. Wilson.

Rd-Q. 157. And did you give him instructions in regard thereto? A. Yes, sir.

Rd-Q. 158. Who informed you in regard to the contents of the wagons 388 and 494? A. Mr. Noble.

Rd-Q. 159. And did you give him instructions in regard to the disposition of such freight? A. Yes, sir.

Rd-Q. 160. Who gave you information in regard to the contents of wagon No. 413? A. Mr. Wilson. 321

Rd-Q. 161. And did you give him instructions in regard to that? A. Yes, sir.

Rd-Q. 162. And you were their superior officer? A. Yes, sir.

Rd-Q. 163. You have been asked in regard to the Southern Express Company. That is an express company engaged in interstate commerce from the south and southwest of Washington, is it not? A. Yes, sir.

Rd-Q. 164. It has no delivery service in the City of New York? A. No, sir.

322 Charles Gordon MacKay.

Rd-Q. 165. And the Adams is its connecting line? A. Yes, sir.

Rd-Q. 166. You were interrogated on cross-examination in regard to the comparison between your wagons and those of the department stores in the City of New York. One of your answers was not very distinct. Was I correct in understanding you to intend to testify that the character of the wagons of the department stores in the City of New York as to construction and size and weight was about the same as the wagons in use by the Adams Ex-
328 press Company?

Mr. Hale: Objected to as leading.

A. Yes, sir.

Mr. Guthrie: That is all.

RECROSS-EXAMINATION BY MR. HALE:

Rx-Q. 167. Did you mean to testify that it is easier to get drivers from some other city than it is to get them from the City of New York? A. I wouldn't put it just that way. If we had to raise a large number of men in a very short time we could send outside and draw them from various sources temporarily.

Rx-Q. 168. What sources, for example? A. Well,
324 Philadelphia, Baltimore, Washington, Pittsburgh.

Rx-Q. 169. You mean men already in your own employ in those cities? A. Yes, in our employ or out of it; in our employ preferably.

Rx-Q. 170. How would you fill the places in these other cities if you brought your own employees from those cities to New York? A. Well, we wouldn't clean out any one town entirely; take a few men from each place.

Mr. Hale: That is all.

W. J. Minard. 325

W. J. MINARD, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. State your name, age, residence and occupation? A. W. J. Minard; 14 Rochester Avenue is my address; my occupation, clerk for the Adams Express Company.

Q. 2. How long have you been in the employ of the Adams Express Company? A. Well, in the neighborhood of three years.

Q. 3. Did you have anything to do with a wagon of the Adams Express Company that was seized or impounded during the recent strike in October or November, 1910? A. Yes, sir, Adams wagon No. 494. 326

Q. 4. Will you please state what you had to do with it, what knowledge you have upon that subject? A. Well, I acted as a guard for the valuables that were carried on this wagon.

Q. 5. Where did those valuables come from? A. From the Bedford depot in Brooklyn.

Q. 6. And do you know whether they were local or interstate shipments? A. They were—the majority of them were Eastern freight.

Q. 7. Interstate shipments? A. Yes, sir. 327

Q. 8. What character of freight was it? A. What do you mean?

Q. 9. Well, were they ordinary merchandise packages or valuable? A. No, sir, all valuables.

Q. 10. What do you mean by valuables? A. Why, such as shoes and everything with a valuation of 50 or more.

Q. 11. Now, what occurred? Did you accompany the wagon? A. Yes, sir.

Q. 12. What date was this? A. About November 9th.

Q. 13. 1910? A. Yes, sir.

Q. 14. State what occurred? A. Why, I was seated on the wagon——

Q. 15. Who was with you? A. The driver and another man with him.

Q. 16. The helper of the wagon? A. The helper of the wagon, yes, sir.

Q. 17. Was it a two horse wagon? A. Yes, sir. And we had driven to 48th Street and Fifth Avenue and we had to stop there while traffic was passing through 48th Street, and a stout policeman, I think he was a roundsman, came over. He
329 asked the driver if he had a license and the driver said no, he had no license, and he said come along with me then. So this roundsman called another policeman that was nearby and told him to take the team up Fifth Avenue to about 53rd Street,—I think we went through 53rd Street to Third Avenue or Lexington Avenue, and down Lexington to 51st Street, through 51st Street to the police station.

Q. 18. What police station? A. The 51st Street station—well, I thing it was the 29th Precinct.

Q. 19. That is you and the driver and the helper together with the wagon and this policeman? A.
330 Yes, sir.

Q. 20. Now, state what happened? A. And this roundsman came along, then shortly afterward, went into the police station, and spoke to the captain, and then he, the captain, gave orders to several policemen in the station to take the stuff off the wagon and pile it in the police station.

Q. 21. And what was done then by the police? A. There were about four policemen, and they piled all the stuff in the police station, took everything off the wagon, and then the roundsman,—he looked like it, he had two marks on the side of his

coat,—took an inventory of the freight, took it all down.

Q. 22. How many packages were there? A. As far as I remember there was in the neighborhood of 139, 139 or 140, somewheres around that.

Q. 23. Did he give you a receipt for the packages? A. No, sir.

Q. 24. What did he do with this inventory that he took? A. The captain took charge of it.

Q. 25. And was this done under the direction of the captain? A. Yes, sir.

Q. 26. What became of the driver and the 332
helper? A. Why, they went home.

Q. 27. Was any charge entered on the blotter against them? A. Not that I know of; no, sir.

Q. 28. What became of the wagon after it had been emptied by the police? A. Why, the captain asked if there were any policmen there that could drive a team and two of them volunteered, and they both got on the wagon and drove off.

Q. 29. And that was the last you saw of the wagon? A. The last I saw of the wagon, yes, sir.

Q. 30. Did this wagon have any name on it? A. The Adams Express Company, yes, sir.

Q. 31 And it was a wagon in daily use by the 333
the Adams Express Company to your knowledge? A. Yes, sir.

Q. 32. Now, when did you next see the freight that had been taken into the station house? A. Well, I stayed there. The captain asked me if I didn't think I ought to stay there and take charge of the freight until some one came to take it away or some representative of the Adams Express Company came there. I told him I would.

Q. 33. Then what did you do ? A. Then I stayed there until some light haired gentleman, who I think was a representative of the Adams Express

334 W. J. Minard.

Company came there and spoke to me, and asked me for the valuable sheets which I held, and he told me that he would take charge of them, and I turned them over to him, and he told me to stay there, that he was going to the 48th Street depot to see Mr. Noble and he told me I should wait there until he came back, which I did. He came back the second time; he had a little talk with the captain,—the captain was getting ready to go home,—he talked to him for a while and he told me that he was going to Canal Street to see Mr. Wilson, and I
335 should wait, and I waited for about an hour and so he didn't come back and I called up Mr. Noble—

Q. 34. Did you give him the list of the shipments which you had? A. Yes, sir.

Q. 35. And what became of that list, do you know? A. No, sir.

Q. 36. Will you please look at the papers now shown you and state whether or not this is the original waybill or waybills which you had in your possession at the time of the seizure and impounding of the packages by the police as you have testified (handing to witness)? A. Yes, sir.

Q. 37. And does that contain a true list of the packages as transferred by the police from your
336 wagon into the police station? A. Yes, sir.

Q. 38. And you checked the same at the time in the police station? A. Not in the police station, I didn't myself, no, sir.

Q. 39. But this is the waybill representing those shipments at that time? A. Yes, sir.

Mr. Guthrie: I offer that in evidence; I offer the whole bunch.

Papers referred to marked as one exhibit, Complainant's Exhibit No. 20, J. A. S., Ex'r., January 20th, 1911.

Q. 40. It appears from this Exhibit No. 20 that

some of these waybills are dated October 27th, others are dated October 28th, others October 29th and others October 31st, November 1st, November 3rd, November 4th, November 7th and November 9th. Can you explain how it happens that these waybills bear these different dates? A. No, sir.

Q. 41. Have you any knowledge in regard to these waybills representing accumulations of freight in Brooklyn?

Mr. Hale: Objected to as leading.

A. No, sir.

Mr. Guthrie: That is all. 338

Cross-examination waived.

WM. J. MINARD.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

CHARLES GORDON MACKAY, recalled:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. Mr. MacKay, you have heard the testimony of the witness Minard, have you not? A. Yes, sir.

Q. 2. Referring to Complainant's Exhibit No. 20, can you explain how it is that there are a number of separate waybills on separate dates? A. 339
Yes, sir.

Q. 3. Please state the reason? A. That represented an accumulation extending from the first day of the strike; it was entered on those sheets from day to day, and when we finally had a man who was competent to take it to the depot it was all sent on that one wagon.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 4. What caused the accumulation? A. Well, the freight simply stayed there.

x-Q. 5. Because of the strike? A. Yes, sir.

Adjourned to Monday, January 23rd, 1911, at 2.30 o'clock P. M.

340 Charles Gordon MacKay.

NEW YORK, January 23rd, 1911,
2.30 P. M.

Met pursuant to adjournment.

Present: Counsel as before.

It is admitted, for the purposes of this case, that the Adams Express Company, between October 28th and November 15th, 1910, published the following advertisement in the following newspapers:

"Expressmen wanted—drivers and helpers. Good salaries. Apply Adams Express Co., 309 Canal Street."

341 Published between October 28th and November 15th, 1910, in the following daily newspapers:

Herald	5 times
Sun	14 times
Tribune	16 times
World	15 times
American	15 times

Also published repeatedly in Globe, Mail, Press, Times and Telegram.

Mr. Guthrie: I offer in evidence a statement showing the number of wagons in ordinary use by the Adams Express Company in the conduct of its
342 business in the City of New York, showing where such wagons are stabled, and the character of such wagons, whether doubles, singles or autos, and the number of drivers, helpers, motormen, conductors and third men.

Paper referred to marked Complainant's Exhibit No. 21, J. A. S., Ex'r, January 23rd, 1911.

CHARLES GORDON MACKAY, recalled:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. Are you able to state whether or not any drivers or helpers of the Adams Express Company were ever arrested by the police or officials of the

City of New York for driving without an express license, except during the recent strike? A. There were no such arrests.

Q. 2. Are you able to state whether any wagons of the Adams Express Company have ever been impounded or seized by the police or city authorities on the ground that they were not licensed as express wagons, other than during the recent strike? A. There have been no such seizures.

Mr. Guthrie: That is all.

CROSS-EXAMINATION BY MR. HALE:

344

x-Q. 3. How are you able to state the facts as you have stated them in response to the last two questions? A. Well, if there had been any such seizures a report would have been made to me, and I know that I have received no such report.

x-Q. 4. Your testimony, then, is based upon the fact that you received no reports of such arrests, is that correct? A. Yes, sir.

Mr. Hale: That is all. Motion is made to strike out the answers of the witness upon the ground that it is not the statement of any fact within the personal knowledge of the witness.

345

REDIRECT-EXAMINATION BY MR. GUTHRIE:

Rd-Q. 5. To your knowledge has there ever been any interference with the conduct of the business of the Adams Express Company because of the arrest of its drivers for not being licensed or because of the seizure and impounding of its wagons, except during the recent strike? A. Except during the strike, that is all.

Rd-Q. 6. And in the ordinary course of the business of the Adams Express Company would such incidents be reported to you? A. Yes, sir.

346 Charles E. Wilson.

Rd-Q. 7. Would it be the duty of your subordinates to make those reports to you? A. Yes, sir.

Rd-Q. 8. And be part of your duty to investigate any such cases of interferences with the business? A. Yes, sir.

C. G. MacKay.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

CHARLES E. WILSON, called and sworn as a witness on behalf of the complainant, testified as fol-
347 lows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your name, age, residence and occupation? A. Charles E. Wilson; 56 years of age; 78 Washington Street, Morristown, New Jersey; superintendent, wagon service, Adams Express Company, New York.

Q. 2. How long have you been in the employ of the Adams Express Company? A. About 30 years.

Q. 3. And generally in what capacities? A. As a driver in Newark; clerk in Newark; agent, Long Branch; as an inspector in New York City and superintendent of wagon service.

348 Q. 4. What are generally your duties and functions as superintendent of the wagon service of the Adams Express Company? A. To hire a force to operate the wagons; attend to and pass on all suspensions of delinquents; and furnish each office with a certain number of wagons, and to see that they are properly manned; see that schedules are covered in the handling of the freight in and out of New York City.

Q. 5. Are you familiar with the character of vehicles owned and used by the Adams Express Company? A. Yes, sir.

Q. 6. And you have been for—— A. Eleven years.

Q. 7. Do you remember that during the recent strike the Adams Express Company advertised for drivers and helpers? A. Yes, sir.

Q. 8. Will you please state as briefly as practicable with what result? A. Well, as near as I can tell, we had about 25 applicants, and accepted about three of the 25, and I am not sure that we put two of the 25 to work; we gave the three blanks to fill out and bring around the next day.

Q. 9. Why were they not all accepted? A. Well, 350
we didn't like their general appearance; before we would let them in the place, that is at 309 Canal Street—they had congregated at the door; somebody would come in and say, there is a lot of people out there looking for a job; we would go and look through the window, and with my experience in taking on help,—while I make mistakes, possibly,—I can tell pretty well from the general appearance of the men whether we want them in our line.

Q. 10. Did you make efforts, and if so what efforts, during the strike to fill the places of the strikers in the City of New York?

Mr. Hale: Objected to as irrelevant and immaterial, and not a matter in which the defendants 351
are at all concerned.

A. By the advertisements placed in the papers, and any one that would come along looking for a position in the regular way.

Q. 11. What was the result? Were you or were you not able to procure the necessary competent help? A. We were not.

Q. 12. What is the average number of drivers and helpers that the Adams Express Company employs from month to month, approximately? A. New help taken on?

352 Charles E. Wilson.

Q. 13. No, the whole help? A. The whole help? Well, it is—I think there is about eight or nine hundred men on the regular roll.

Q. 14. And what do they consist of? A. Drivers, helpers, third men—that is where there is a third man on the wagon.

Q. 15. Motormen? A. Motormen and helpers or conductors on the cars.

Q. 16. What do you mean by the conductors? A. Well, on a wagon we call the driver the driver, that is the man in charge of the wagon, and the
353 helper is the man that takes the tail end of the wagon, and to guard the wagon; on the automobile for some reason the helper has been called the conductor and the chauffeur, the motorman or driver, just whichever you might call the one on the front end that operates the machine.

Q. 17. So that the expression regular conductors on the Exhibit 21 simply means the helpers on automobiles? A. Yes, sir.

Q. Have you also what may be termed an extra list? A. Yes, sir.

Q. 19. And about how many men are carried on what you term the extra list? A. We consider that pretty well filled up when we have 150, and we
354 carry from 125 to 150 all the time; if there is that much help, that we think will do for everybody.

Q. 20. Will you please state as briefly as practicable your method in the selection and employment of drivers and helpers? A. Every morning,—nearly every morning,—we have a line formed of applicants outside of the office door; they come in the office one at a time, state their business, and if we like their appearance we talk with them, and if not we say nothing doing, turn them out; by that I mean that their general appearance indicates that they never could be drivers or wagon men; and if we like them we ask

for their letters, if they show them and they look all right the man is given a blank application and told to bring it in the next morning. The next morning he brings it in and he is told to come in in five days, and if we don't hear from the surety department in five days that this man is rejected, we give this man a letter to an inspector at one of our stables, and he is there as an extra, reporting daily until for some reason he is changed to some other stable, and when there is a vacancy he is put on the regular roll as a helper.

Q. 21. Are these extras employed frequently to help on the wagons? A. Yes, sir. 356

Q. 22. So that they are employed from time to time or until you can give them regular employment? A. Yes, sir, and we try not to have more than we can give a fair amount of work to induce them to stay until the time when we can give them regular work, not to have too many of them.

Q. 23. So that they are employees who are irregularly employed whilst waiting for the permanent or regular employment? A. Yes, sir.

Q. 24. You have referred to an application blank. Is that the form in use by the Adams Express Company? (handing to witness). A. Yes, sir. 357

Q. 25. And is it the invariable custom to have the applicant for the position of driver or helper or motorman fill out such an application? A. Yes, sir.

Q. 26. And then what is done with this application? A. Sent to the surety bureau.

Q. 27. Have you a bureau in the Adams Express Company where investigation is made as to the references and history of all men applying for employment? A. But Mr. Zimmerman can tell you more about that, the method.

Q. 28. But you have such a bureau? A. Yes, sir.

Q. 29. And these applications are sent to that bureau? A. Yes, sir.

Q. 30. And if within five days you do not hear anything against the applicant you then put him on your extra list? A. Yes, sir.

Mr. Guthrie: I offer that form of application in evidence.

Paper referred to marked Complainant's Exhibit No. 22, J. A. S., Ex'r, January 23rd, 1911.

359 Q. 31. Mr. Wilson, how do your single and double wagons of the Adams Express Company compare in size and weight and general character with the wagons of the department stores, grocers and wholesale and retail merchants in the City of New York? A. How do they compare with other wagons of department stores, wholesale grocers and so forth? Well, we have some that will compare with all of them; for instance, take the singles, our single wagons will compare for size and so forth and capacity with single wagons of department stores; and our doubles—while those department stores do not use the exact style of double wagon that we do, they have a wagon with more of a plat-

360 form build, but about the same weight.

Q. 32. About the same width? A. Well, there might some be a little wider than we have. Our three windlass trucks, they compare with wholesale grocers' ordinary trucks; ours are not the heaviest kind of trucks, they carry three ton, maybe 7,000 with ease, where an ordinary truck here in town for a wholesale grocer will carry anywhere around four ton, Leggett's, for instance.

Q. 33. Am I correct in stating that all the drivers and helpers are under your supervision? A. Yes, sir.

Q. 34. Can you state whether or not prior to the recent strike in October and November, 1910, any of the drivers of the Adams Express Company were ever arrested because they did not have express licenses in the City of New York?

Mr. Hale: Objected to as calling for matters as to which the witness cannot be personally informed.

A. I can; for the last 11 years I know for a fact.

Q. 35. You know what for a fact? A. That there has never been a driver or wagon under arrest for being without a license.

Q. 36. And by a wagon under arrest you mean 362
that no wagons have been seized or impounded? A. Yes, sir.

Q. 37. Because the Adams had not procured licenses for them as express wagons? A. I know that to be so.

Mr. Guthrie: That is all.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 38. What, if any, record do you keep of applicants for employment that impress you favorably at the time, but whom you do not then assign to this temporary employment of which you have spoken? A. We do not keep any record; we take the man; we have always got a place for a good 363
man.

x-Q. 39. During the recent strike did you bring any employees of the company from other cities to this City to help out? A. I couldn't answer that.

x-Q. 40. Why not? A. Because I don't know.

x-Q. 41. Would that not be in your department? A. No, sir.

x-Q. 42. Who would have charge of that? A. Well, I guess the general agent will have to answer that question.

Mr. Guthrie: Mr. MacKay?

364 Charles E. Wilson.

The Witness: Yes, sir.

x-Q. 43. As superintendent of the wagon service wouldn't you know anything about it? A. Not where they came from; I called for so many men every night and told where I would like to have them placed and they would be assigned and put in charge there by the man or inspector who mans the wagons.

x-Q. 44. And to whom did you give that call, or to whose office? A. Mr. Fraser took them as a rule; Mr. Zimmerman, I believe, did part of the
365 time.

x-Q. 45. How many varieties of wagons or vehicles does the Adams Express Company use in New York? A. I can run them off: There is a three ton truck, a closed van, cage van, double wagon, single wagon, single market truck, double market truck, cage money wagon, three ton automobiles, two ton, and ton and a half, gas cars those are; two ton, one and a half and one ton electrics; three windlass trucks.

x-Q. 46. Which is the heaviest? A. The windlass.

x-Q. 47. And how much do they weigh? A. Well, I will have to guess on that. I do know that
366 our—let me tell it this way: I know that our single wagons weigh about 1,500, our double wagons thirty-two, our closed vans forty; I would judge that the windlass trucks would weigh about the same, possibly forty-two hundred, but I think I should state Mr. Stansberry could answer that better.

x-Q. 48. About how many of each class of vehicles do you employ in New York? A. May I read them?

x-Q. 49. Yes, if you have any memoranda. A. (Referring) We have 237 doubles, 104 singles and

68 automobiles in regular daily service; there is 19 three ton cars, three two ton, eight one and a half ton, those are gas; there is 13 two ton, 12 one and a half and 13 one ton, that is 38 electric; included in those figures are three windlass trucks, and three closed vans; I think that will answer the question.

Mr. Hale: That is all.

REDIRECT-EXAMINATION BY MR. GUTHRIE:

Rd-Q. 50. The list of wagons that you have given includes the service in Brooklyn, upper New York and Jersey City, does it not? A. Yes, sir. 368

Rd-Q. 51. Everything in the New York department? A. Everything in the New York division.

Rd-Q. 52. To what extent are the wagons stabled in Jersey City?

Mr. Hale: Objected to as irrelevant and immaterial.

A. (Referring to Complainant's Exhibit 21) There is in Jersey City stables, 137 doubles, 69 singles. In 47th Street there is 31 doubles, 14 singles, 26 automobiles. In 56th Street stable, 50 doubles, 21 singles. In 124th Street, 19 doubles. There are 34 automobiles in Brooklyn; total of 409.

Rd-Q. 53. Then do I understand that the Adams 369 Express Company has three stables on Manhattan Island? A. Yes, sir.

Rd-Q. 54. And also a stable in Jersey City? A. Yes, sir.

Rd-Q. 55. You also have a stable or depot in Brooklyn? A. Yes, sir.

Rd-Q. 56. In Furman Street? A. Yes, sir.

Rd-Q. 57. And another at the Bedford depot? A. Yes, sir.

Rd-Q. 58. And you keep 34 automobiles in Brooklyn? A. Yes, sir.

370 Charles E. Wilson.

Rd-Q. 59. But none of your horse wagons are stabled in Brooklyn? A. No, sir.

Rd-Q. 60. They are all stabled either in New York or Jersey City? A. Yes, sir.

Rd-Q. 61. When you said that you took a good man on, what did you mean by that? A. Well, we are never so full but that we will take on a man that we know is experienced and has a good record somewhere else, or that you can see he is above the average, even if he has no experience.

Rd-Q. 62. Does such a man go on the extra list?
371 A. Every one is employed as an extra until he is assigned and promoted to be a regular.

Rd-Q. 63. So that he begins by being put on what you call the extra list? A. Yes, sir.

Rd-Q. 64. And given occasional employment as such? A. Yes, sir.

Rd-Q. 65. And then he is promoted ultimately from that extra list to the permanent employment? A. Yes, sir.

Rd-Q. 66. In testifying that you had wagons of two and three tons, did you mean the carrying capacity? A. Yes, sir.

Rd-Q. 67. You didn't mean the weight of the
372 wagon? A. No, sir.

Rd-Q. 68. You mean the carrying capacity in each instance? A. Yes, sir.

RECROSS-EXAMINATION BY MR. HALE:

Rx-Q. 69. The weight of the wagon has some relation to the weight of the load designed to be carried by it, has it not, in most instances? A. Well, it is inconsistent for an electric car weighing say thirty-five—if I remember just right—something like 3,500, to load 2,000 on; they are different from a horse wagon. They are built for so much, and we are told how much we can put on them, and we try to stay within that limit.

George W. Stansberry. 373

GEORGE W. STANSBERRY, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your name, age, residence and occupation? A. George W. Stansberry; 47 years; 342 West 123rd Street; superintendent of stables and garages for the Adams Express Company.

Q. 2. Will you state how long you have been in the employ of the Adams Express Company? A. 374
27 years.

Q. 3. And where and in what capacity? A. In the western department, Illinois, Wisconsin, Minnesota, for the first 15 years, first 14 years as agent, messenger and acting route agent, clerk. In New York as chief clerk of the superintendent's office, and superintendent of stables and garages.

Q. 4. And how long have you been superintendent of stables and garages for the Adams Express Company? A. Six years.

Q. 5. Are you able to state of your own knowledge whether or not the stables or wagons of the Adams Express Company have during that period ever been inspected by the municipal authorities 375
of the City of New York? A. I have no knowledge of them ever having been inspected.

Q. 6. And are you constantly around at the various stables and garages? A. Almost daily.

Q. 7. And would it be the duty of your subordinates to report such inspection to you? A. Positively.

Q. 8. And you never heard of such inspection having been made? A. At no time.

Q. 9. You are familiar with the general character of the wagons in use by the Adams Express Company in its business? A. I am.

376 George W. Stansberry.

Q. 10. Are you also familiar with the general character and construction of wagons in use in the various department stores of the City, and wholesale and retail grocers, and the wholesale and retail drygoods merchants and other merchants? A. So far as one can become familiar from observation, close observation, yes.

Q. 11. Have you had occasion to make a study of the construction of the wagons of the Adams Express Company? A. I have.

Q. 12. And have you had occasion in the course
377 of your business to compare that construction with the construction of other wagons in the City of New York? A. I have.

Q. 13. And have you constantly done so? A. From time to time.

Q. 14. How do the Adams Express Company wagons compare with the wagons in use by the concerns that I have referred to and other similar concerns in the City of New York? A. Well, they are the same in a general way, differing only in many cases in the matter of the form and shap of the body, and according to the character of the load to be hauled, and in the advertising features
378 that the particular company wants to give to their business; but in the general way their construction is similar.

Q. 15. Take the case of the single wagons in use by the Adams Express Company in the City of New York: How do they compare in size and character and general construction with the single wagons, delivery wagons, of the department stores, grocers and drygoods merchants and other people engaged in using the streets in the City? A. The single wagons compare along general lines, the same as those employed by the concerns you mention, and in the construction of the running part of the

wagon, the carrying capacity, the space occupied upon the street or elsewhere, is very much the same.

Q. 16. Now take the double wagons of the Adams Express Company, which I take it are the two-horse wagons, which are called doubles in your business: How do they compare with the two-horse wagons in use by department stores or grocers, wholesale or retail, or other wholesale or retail merchants in the City of New York? A. Well, the same is true of the comparison there; whatever difference there is is more in the construction of the body, the carrying bed or platform or whatever it may be on 380
the wagon, the running gear is very similar; also the space occupied on the streets, for two-horse wagons. If anything at all the two-horse wagons of wholesale grocers and wholesale and retail dry-goods concerns have a greater carrying capacity than we have, both loading and carrying.

Q. 17. Are they, therefore, heavier than the doubles of the Adams? A. They would be.

Q. 18. Well, taking the automobiles, gasoline and electric, in use by the Adams Express Company: How do they compare in size and weight with automobiles used by department stores, such as Gimbel Brothers, and other merchants in the 381
City of New York? A. Well, those of the large New York merchants, department stores, manufacturing and wholesale concerns, use practically the same automobile equipment that we do; they are made by the same concerns, and have identically the same chassis or running part that we have.

Q. 19. And are they substantially the same weight? A. Very much the same.

Mr. Hale: Objected to as leading.

Q. 20. From whom do you buy your automobiles? A. Well, there are several concerns; we buy from

382 George W. Stansberry.

the Packard Motor Car Company, the General Vehicle Company, the Autocar Company and the Lansdowne Company.

Q. 21. And to your knowledge have these several companies a number of similar wagons in use in the City of New York? A. Yes, they have.

Mr. Hale: The testimony of this witness as to the comparison of the various classes of vehicles is objected to as being a mere statement of opinion and not a fact, and motion is made to strike it out; and it is also objected to as irrelevant and immaterial.

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Q. 22. Have you personally made a comparison of the single wagons in use by the Adams Express Company with other single or one-horse wagons in use by the concerns that you have referred to? A. I have.

Q. 23. Have you made a personal examination and comparison of the two-horse or double wagons in use in the Adams Express Company business with the two-horse or double wagons in use in the concerns to which you have testified to? A. I have.

Q. 24. Have you personally made an examination and comparison of the automobiles in use by the Adams Express Company and the automobiles

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in use by other business concerns in the City of New York? A. I have.

Q. 25. And has your testimony given preceding these few questions been based upon that personal examination and investigation on your part? A. It has.

Mr. Hale: The objection is renewed.

Q. 26. Have you observed the use of the streets of the City of New York by vehicles substantially similar in construction to the vehicles of the Adams Express Company? A. I have.

Q. 27. And what can you say in regard to the

manner or comparative manner in which such wagons use the streets? 385

Mr. Hale: Objected to as irrelevant and immaterial and as calling for the mere opinion and conclusion of the witness.

A. I have observed the use of the streets by different classes of wagons, our own and other wagons, and find that in the nature of their service they are very much the same.

Q. 28. In regard to the speed of our wagons, how does that compare with the speed of other similar wagons used by other concerns in the City? 386

Mr. Hale: The same objection.

A. That depends entirely upon the time and circumstances under which they are used. Any one of our wagons will load at the depot with 60 or 70 deliveries, spend the morning in distributing them around in a small area of territory, possibly three or four blocks, four or five, and they go very slowly while that work is being done. The same is true when they start over the same territory to pick up freight to go outside of the City in interstate commerce, and when they finish that work and start to the depot or to make the ferryboats they sometimes drive fairly fast, but outside of that their speed is slower than the average vehicle. 387

Q. 29. Have you had occasion frequently to investigate and observe as to this use of the streets by the Adams Express Company? A. Daily.

Q. 30. And in comparison with the wagons of other concerns? A. Yes.

Q. 31. How do the wagons of the Adams Express Company and the other express companies in the City of New York compare in number or quantity with the other similar wagons—I mean similar

388 George W. Stansberry.

in general construction, one and two horses and automobiles—in use throughout the City?

Mr. Hale: Objected to as irrelevant and immaterial, and as calling for the opinion and conclusion of the witness; the question is also objected to as to form.

A. I should say that the express companies bear a proportion of possibly one to twenty of other kinds of the same general size and of the same carrying capacity and so forth.

Q. 32. Are the express wagons any greater interference with traffic than other similar wagons as
389 to which you have testified?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, and as calling for the opinion of the witness.

A. I should say not.

Q. 33. So far as you know do the express wagons require any special care from the police in charge of the traffic as distinguished from the care of the police of other similar wagons?

Mr. Hale: The same objection repeated.

A. They do not.

Q. 34. And are they, I mean the express wagons, any greater menace to pedestrians in the
390 City of New York than other similar wagons owned by the department stores and wholesale and retail merchants that you have referred to?

Mr. Hale: Same objection.

A. I would say no.

Q. 35. Mr. Stansberry, did you have knowledge during the recent strike of the arrest by the police of several of the drivers of the Adams Express Company? A. I was so informed.

Q. 36. And was that matter brought to your attention as superintendent of the stables in the

course of your duty as such? A. It was, as far as the wagons are concerned.

Q. 37. Do you recall that several wagons of the Adams Express Company were seized and impounded by the police of the City during that strike?

Mr. Hale: Objected to as incompetent, irrelevant and immaterial, as shown to be hearsay, and upon the ground that the City authorities were acting in the due and orderly execution of the laws.

A. I do.

Q. 38. Do you recall the numbers of those 392
wagons? A. I can't recall them just at the present time.

Q. 39. Do you remember whether No. 388 was one of the wagons? (Handing paper to witness.)

Mr. Hale: I have no objection to your refreshing his memory if it will do any good.

A. Those are the wagons, to the best of my recollection.

Q. 40. That is, to the best of your recollection, double wagons numbers 388, 413 and 494 were the wagons which were seized and impounded by the police? A. Yes.

Q. 41. What did you do in regard or in connec- 393
tion with this seizure or impounding? A. When we were notified that the wagons had been seized an effort was made to get our wagons out.

Q. 42. Well, just state what you personally did as superintendent of stables? A. That matter was not in my hands at the time, it was taken care of by the general agent's office.

Q. 43. Then you didn't give any personal instructions in regard to that? A. No.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 44. Is a certain territory assigned to particular wagons or how are they employed in the con-

394 George W. Stansberry.

duct of your business? A. New York City is divided into districts and certain drivers with certain wagons are assigned to that territory.

x-Q. 45. You mean a number of wagons or drivers will be assigned to a single district? A. Yes, sir, that is right.

x-Q. 46. And then how do they cover the district? A. Well, each one has his special territory to which he takes deliveries in the morning, or whatever time he goes out on the streets, and picks up afterwards.

395 x-Q. 47. Each wagon has then what might be termed a sub-district or route to patrol? A. That is right. That is what they call route wagons.

x-Q. 48. And how are the other wagons used? A. Well, we have wagons that are called schedule wagons, which haul freight between offices and depots; they take the freight that has been picked up by the route wagons and move it to such points necessary to get it away from the city.

x-Q. 49. What is the smallest territory or route covered by a single wagon? A. You mean by one wagon or one-horse wagon?

x-Q. 50. By any one wagon of your company? A. Well, I am not prepared to say.

396 x-Q. 51. I mean in distance or territorial extent? A. We have some wagons that only take in two or three blocks, or just a very small territory.

x-Q. 52. And from that it varies up to how much? A. Well, in the upper part of the city to sometimes a territory that will occupy a square mile; that is in the Harlem or Bronx district.

x-Q. 53. How would it be in the more or less congested business districts? A. Very small, always.

x-Q. 54. How many wagons of the Adams Express Company altogether were impounded accord-

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ing to the information concerning which you have testified in chief? A. That is a matter that I ought not to be asked about; I only know that from hearsay—three wagons.

x-Q. 55. On what days were those wagons taken up? A. I can't give you that information.

x-Q. 56. Well, were they all about the same time? A. Within a short period, very close to each other. To the best of my recollection they were all taken on the same day, November 9th, 1910.

Mr. Hale: That is all.

REDIRECT-EXAMINATION BY MR. GUTHRIE: 398

Rd-Q. 57. Mr. Stansberry, when you speak of a wagon picking up, do you mean that it collects freight? A. I do.

Rd-Q. 58. For shipment over the Adams Express Company? A. That is the meaning.

Rd-Q. 59. So that drivers may go out in the morning or the afternoon with a load of packages to deliver and then make collections in the same district before returning to the office? A. That is the custom.

Rd-Q. 60. And have you personal knowledge of the custom in regard to deliveries and collections on such a thoroughfare as Broadway or Fifth Avenue? 399 A. Only that we undertake to avoid crossing those streets by laying out our district contiguous to Fifth Avenue and Broadway so that a driver in a certain district don't have to cross the streets in order to make his delivery or pick-up.

Rd-Q. 61. Is it in order not to interfere any more than is necessary with traffic? A. For that purpose and for our own safety and convenience.

Rd-Q. 62. So that, for example, on Fifth Avenue, will a wagon be confined we will say to the right-hand side going up Fifth Avenue? A. Well, if his district lies east of Fifth Avenue he will be

400 Charles E. Wilson.

on that side of that street; he won't have to pass over to the west side in order to make either his delivery of freight or a collection.

Rd-Q. 63. And does the same thing apply to Broadway? A. It does, below 59th Street.

Rd-Q. 64. Below 59th Street? A. Yes, sir.

Rd-Q. 65. And is that same practice observed in other congested districts? A. So far as may be practicable.

G. W. STANSBERRY.

Sworn by me,
JOHN A. SHIELDS,
401 Examiner.

CHARLES E. WILSON, recalled:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You have referred in your testimony to the applicants who come to the office of the Adams Express Company seeking positions as drivers and helpers, and you have stated that you make an examination and reject some and have others fill in blank applications. Taking the last four or five years, will you please state what has been the general experience as to the percentage of men applying for positions of driver or helper in the
402 City of New York to those that you find competent or capable to act in those positions? A. Well, we do not take on more than a third of what do apply—about three in ten, something like that.

Q. 2. You think that three in ten is about a fair average? A. Yes, sir.

Q. 3. Of the applicants who apply to you for the position of helper or driver? A. Yes, sir.

Mr. Guthrie: That is all.

C. E. WILSON.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

CAM F. RAIFORD, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. What is your name, age, residence and occupation? A. Cam F. Raiford; 44; 288 Clinton Street, Brooklyn; assistant general agent of the Adams Express Company.

Q. 2. How long have you been in the employ of the Adams Express Company? A. 20 years.

Q. 3. How long have you been in the express business? A. 32 years.

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Q. 4. Where were you employed before you were employed with the Adams Express Company? A. Wells, Fargo & Company, and the Texas Company in Texas.

Q. 5. Have you in the performance of your duties as assistant general agent had occasion to investigate as to the number of wagons using the streets of the City of New York? A. Yes, sir.

Q. 6. Are you familiar with the wagons of the Adams Express Company? A. Yes, sir.

Q. 7. And have been for many years? A. Yes, sir.

Q. 8. Have you personally examined and investigated as to the construction and general character of wagons in use by the department stores, wholesale and retail grocers and wholesale and retail merchants in the City of New York? A. I have not figured on it in the way of the actual building of the wagon, only from observation.

405

Q. 9. But you have made comparison from observing the wagons in use on the streets of the City of New York? A. Yes, sir.

Q. 10. How do these wagons in use in the streets of the City of New York and belonging to department stores and wholesale and retail merchants compare in appearance, size and width and height

with the wagons of the Adams Express Company? A. With some of the concerns they are practically the same; with others they are much smaller; the singles are pretty much the same all over as any single that is used by any concern; but take coal concerns and wholesale grocers and other people, why, our wagons are smaller than theirs.

Q. 11. Are our wagons smaller than the wholesale grocers? A. Yes, sir; in many cases.

Q. 12. And the wholesale dry goods merchants? A. Yes, sir.

407 Q. 13. Have you made an investigation to determine the comparative number of wagons similar to those of the Adams Express Company using the streets of the City for the transportation of merchandise? A. Yes, sir.

Q. 14. What is approximately the comparison?

Mr. Hale: Objected to as calling for the conclusion of the witness involved by the use of the word "similar."

A. About one in 20, I should say, would be the express company's percentage.

Q. 15. And how long have you been engaged in making this investigation? A. Well, practically, ever since our wagons were taken to the pound.

408 Q. 16. Well, practically since the strike? A. Since the strike, yes, sir.

Q. 17. And have you also had a number of men under you making investigation of these facts? A. For the past three weeks.

Mr. Guthrie: That is all.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 18. When you say that your wagons are smaller than those of wholesale grocers, you mean that some of your wagons are smaller than some of the wholesale grocers? A. Yes, sir.

x-Q. 19. Not smaller than all of them? A. But

the percentage of theirs is greater than ours, that is heavier.

x-Q. 20. And that was the single or double horse wagons? A. Double horse.

x-Q. 21. Of wholesale grocers? A. Their single wagons will compare with what we call our single market trucks; they are practically one and the same thing.

x-Q. 22. Now, what is the case as to the department store wagons? A. The singles are pretty much the same thing.

REDIRECT-EXAMINATION BY MR. GUTHRIE: 410

Rd-Q. 23. The same as ours? The same as the Adams? A. The same as the Adams.

C. F. RAIFORD.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

ROBERT W. ZIMMERMAN, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your name, age, residence and occupation? A. Robert W. Zimmerman; 31; 176 West 81st Street, New York; assistant general agent, Adams Express Company. 411

Q. 2. How long have you been in the employ of the Adams Express Company? A. Five and a half years.

Q. 3. What are your duties generally as assistant general agent? A. I look after—that is, they come under me, the different bureaus, accounting, correspondence, expense, surety, collection.

Q. 4. Does the Adams Expres Company keep an investigation or surety bureau? A. Yes, sir.

412 Robert W. Zimmerman.

Q. 5. And have you heard the testimony of the witness Wilson? A. Yes, sir.

Q. 6. And what is done when an application such as Exhibit No. 22 is sent to the surety bureau? A. The application, on the face of it, contains the names of the former employers of the applicant, and we send a representative who makes a personal call on the last two employers; this representative also calls at the house or the given address of the applicant in order to see whether it is true or not and see what his home surroundings are, interview
413 the members of his family, learn what we can about him; the rest of the investigation is carried on by correspondence; we correspond with each and every one of the names given on the application the man states he has worked for, and on the other side of that sheet there is a space showing—a space for five or six names that the man must give of people who will testify as to his character—not whom he has worked for—but as to his character, and what they know about him; we correspond with them.

Q. 7. If the references are satisfactory what is then done? A. Nothing is done; the man is allowed to continue to work.

414 Q. 8. And if the references are not satisfactory, what is then done? A. He is rejected.

Q. 9. Well, who is notified? Mr. Wilson, in charge of the place? A. If we are only speaking of the wagon service, yes, sir.

Q. 10. What other service? A. All our clerks.

Q. 11. They all pass through this system of investigation? A. Every employee, yes, sir.

Q. 12. Could you give us an idea of the extent to which applications have to be rejected? A. Yes, sir.

Q. 13. About how many applications a month do you have in ordinary times? A. We have around 200, some months more.

Q. 14. And what is the average result of the applications? A. A large number of these 200 or more drop out because we are investigating them; when they come they don't know that they are going to be investigated, and many times they give a false showing of their former employment; as soon as we discover that, we will, in the case of the wagon service men, send a letter to Mr. Wilson saying that we have discovered this and that about the man that doesn't show on his application, and ask him how he explains it, and in most cases where we show up something like that on the man, he disappears; that is we hear no more of him; Mr. Wilson will reply later that the man has not been to work since. 416

Q. 15. But without going into particulars, of the 200 applications which you say you receive in a month, how many will have to be rejected? Can you approximate it? A. I have some figures, if you want me to look at them.

Q. 16. Give us about the number? A. I have forgotten what they are; I will look these up; take a month—the month of September, 300 applied— 299 applied—on January 1st there were only 102 of these in the service left, that were still here; November, we had 250 apply for service, 100 of these remain. 417

Q. 17. That is, 150 were rejected? A. Yes, sir.

Q. 18. Out of 250, is that about the average? Do you recollect whether that is about the average, month by month? A. Yes, sir; that would be about the average.

Mr. Guthrie: That is all.

418 James Stephen Noble.

Mr. Hale: The entire deposition of this witness is objected to as irrelevant and immaterial.

Cross-examination waived.

R. W. ZIMMERMAN.

Sworn by me,
JOHN A. SHIELDS,
Examiner.

Adjourned to Friday, January 27th, 1911, at 2.30 o'clock P. M.

NEW YORK, JANUARY 27th, 1911,
419 2.30 P. M.

Met pursuant to adjournment.

Present: Counsel as before.

JAMES STEPHEN NOBLE, called and sworn as a witness on behalf of complainant, testified as follows:

DIRECT-EXAMINATION BY MR. GUTHRIE:

Q. 1. You will state your name, age, residence and occupation? A. James Stephen Noble; 34; agent, Adams Express Company; residence, 225 East 53rd Street.

Q. 2. How long have you been employed by the
420 Adams Express Company? A. 14 years.

Q. 3. In what capacities? A. Well, from waybill clerk up to my present position as agent.

Q. 4. What, briefly, are your duties as agent? A. Taking charge of the eastern depot.

Q. 5. What depot is that, 48th Street? A. 48th Street and Madison Avenue. All the freight that comes from the eastern points is all handled there.

Q. 6. That is, the freight coming over the New York, New Haven & Hartford Railroad Company? A. New York, New Haven & Hartford; yes, sir.

Q. 7. And also the freight going over the New

York, New Haven & Hartford Railroad to points east? A. Yes, sir.

Q. 8. What, if anything, do you know in regard to the seizure or impounding of wagons of the Adams Express Company in November, 1910? A. Why, I was notified by the police that they had two of our wagons there at the station house.

Q. 9. When was this? A. On the night of November 9th.

Q. 10. You were notified by the police that they had two of your wagons? A. Two of our wagons; yes, sir, with the freight on.

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Q. 11. With the freight on? A. The freight was in the station house at the time they told me.

Q. 12. What were the numbers of the wagons? A. 388 and 494.

Q. 13. State what you did? A. Why, I went over to the station house.

Q. 14. What station house? A. 51st Street station house, and looked at the freight there to see what it consisted of; brought one of my men from the terminal and left him in charge of the goods all night.

Q. 15. Do you know anything about that freight, that particular freight; had you had anything to do with its loading? A. Why, one wagon in particular I had loaded five crates of hats on for the Panama Railroad from Danbury.

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Q. 16. What was the number of that wagon? A. 494.

Q. 17. And that freight had come to New York from where? A. From Danbury, over the New Haven Railroad.

Q. 18. Danbury, Connecticut? A. Danbury, Connecticut.

Q. 19. State whether you went to the police station, and if so what you did? A. Why, I asked the

424 James Stephen Noble.

lieutenant in charge of the 51st Street police station house what became of the wagons, and he said they had been sent to the corporation yard in 56th Street.

Q. 20. Did he say by whom they had been sent? A. No, I didn't ask him that.

Q. 21. Did you find any freight at the station house, and, if so, what freight? A. Yes, I found these five crates of hats which I had loaded on this driver Albert's wagon earlier in the day.

Q. 22. 388? A. 388—I don't remember just the
425 exact number he had.

Q. 23. Well, it was one of the wagons? A. One of the two wagons; I don't know just which one he was driving, and there was also some other freight there which came from our Brooklyn office destined to points east on the New Haven Railroad.

Q. 24. And what did you do with that? A. Why, I placed a guard over it until the following morning, when I relieved him with another man from the depot, and we did that until we recovered the goods.

Q. 25. And ultimately what did you do with the goods? A. On Friday night I called up Captain O'Connor, and asked if I could obtain the goods
426 from there, and he said yes, if I would send a wagon over after them; that was Friday after the day they were seized,—and I sent a wagon over that Friday night and obtained the goods.

Q. 26. And brought them back to 48th Street? A. Yes, sir.

CROSS-EXAMINATION BY MR. HALE:

x-Q. 27. Do I understand you obtained the goods the day following the day they were taken to the station house? A. No, three days later.

x-Q. 28. Three days later. In the meantime had you applied for them? A. I had asked Captain O'Connor for them but he said he would hold them

there pending some order; that is the way he expressed himself.

x-Q. 29. And what else did you do then? A. Why, I simply kept them protected by our employees until such time as the police gave them up to me.

x-Q. 30. Did you make any effort to obtain any order of the sort for the goods? A. No, I did not. I may add that the horses attached to these two wagons were sent to Doyle's livery stable by the police after they had transferred the freight to the precinct station house. 428

J. S. NOBLE.

Sworn by me,

JOHN A. SHIELDS,

Examiner.

IT IS STIPULATED and agreed between the parties, for the purposes of this suit, but subject to correction before final hearing, that the by-laws and ordinances of the Mayor, Aldermen and Commonalty of the City of New York were revised in 1838 and 1839, and published by authority of the Common Council in 1839.

That the ordinances were again revised in 1856 and published by order of the Common Council in 429 the edition known as "Kent's Edition," and that such edition of 1856 contains the first provision in the ordinances providing for the licensing or regulation of express wagons or express drivers.

That the ordinances were revised in 1881 and as so revised published by authority in the edition edited by Shepard and Shafer.

That the ordinances were revised in 1897 and published by authority in the edition edited by Percy and Collins.

That the license ordinances were revised in 1899, and as so revised appear in the printed work en-

titled, Ordinances, Resolutions, etc., passed by the Municipal Assembly of the City of New York and Approved by the Mayor, published in two volumes and printed by the Martin B. Brown Co., dated 1899, which publication shall be deemed in evidence without being filed herein as an exhibit and either party may refer thereto.

And that there has been an annual revision of the ordinances of the City of New York, from 1901 to 1910.

IT IS FURTHER STIPULATED and agreed, for the purposes of this suit, that any of the parties hereto may refer on any hearing or appeal in this suit to any of the ordinances published in these several revisions as fully and to all intents and purposes as if the ordinances had been set out at length in the case, subject, however, to objection upon the ground of relevancy or materiality by either party.

It is also agreed that either party may refer to the Revised Ordinances of 1894 as edited by Laird.

IT IS FURTHER STIPULATED and agreed by and between the parties, for the purposes of this suit, that the ordinances of the City of Brooklyn were revised in 1857 and then published by authority of the Common Council of that city in an edition edited by Henry C. Murphy; that the ordinances of the City of Brooklyn were again from time to time from 1857 to 1873 revised and published by authority of the Common Council in the edition edited by W. G. Bishop, and that the ordinances of said City of Brooklyn were again revised in 1888 and 1889 and published by authority of the Common Council in the edition edited by Shanley and McTierney.

The same stipulation as that in respect of the revisions of the ordinances of the City of New York was thereupon entered into between the parties.

COMPLAINANT'S CASE CLOSED JANUARY 27, 1911.

DEFENDANTS' CASE.

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IT IS FURTHER STIPULATED AND AGREED by and between the parties hereto, for the purposes of this cause only, that the wagon of the Adams Express Company seized on November 9th, 1910, at Canal Street and West Broadway for a violation of the ordinances of the City of New York, in that it was being used and operated as an express wagon without a license, which wagon was placed in the Corporation Yards at the foot of Rivington Street, East River, has been delivered to the Adams Express Company upon its demand since the institution of this suit.

That neither the Mayor nor the Police Commissioner of the City of New York directed or ordered that any express wagons should be held until called for by a driver of the Adams Express Company duly licensed to act as such, or until such wagon was duly licensed.

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That the Police Commissioner of the City of New York, upon the seizure of the express wagons which were being used and operated as express wagons without licenses, directed that said wagons should be delivered up to the Adams Express Company, or its duly authorized agent, upon demand and upon payment of the proper charges, but said Adams Express Company was not notified of such direction until after the commencement of this suit.

435

That defendant William J. Gaynor, Mayor of the City of New York, and defendant James C. Cropsey, Police Commissioner of the City of New York, shall each be deemed to have been called as a witness on the part of the defendants herein and to have each testified that defendants do not claim the right to seize unlicensed wagons and hold the same until a license has been obtained therefor and until removed by a licensed driver of the express company, and that they have never claimed such

436 right and have no intention of claiming or attempting to enforce any such alleged right, but that on the contrary defendants intend to and will deliver to the owner thereof, on demand, any and all express wagons removed from the streets of the city upon the arrest of their drivers for violation of said ordinances in respect to licenses, and that it is merely the use of express wagons in the express business within the city in violation of said ordinances that defendants intend to prevent.

DEFENDANTS' CASE CLOSED MARCH 10, 1911.

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COMPLAINANT'S EXHIBITS. 439

Complainant's Exhibit No. 1, January 11, 1911, J. A. S., Exr.

THE ADAMS EXPRESS COMPANY.

MILEAGE DECEMBER 31, 1910.

Name of Road.	*Miles.*	
Steam Roads.		
Ashland & Western Railway	25	
Baltimore, Chesapeake & Atlantic Railway	87	
Bellefonte Central Railroad	23	
Big Stone Gap & Powell's Valley	6	
Boyne City, Gaylord & Alpena Railroad	27	
Brooksville Railroad	10	
Central New England Railway	187	
Chesapeake & Ohio Railway	1,622	440
Chesapeake & Ohio, of Indiana	285	
Chesapeake & Western Railway	43	
Chesapeake Beach Railway	34	
Chicago, Burlington & Quincy Railroad	8,999	
Coal & Coke Railway	183	
Coal River Railway	51	
Cincinnati, Flemingsburg & Southeastern Railroad	17	
Colorado & Southern Lines:		
Colorado & Southern Ry. Co.	1,117	
Colorado Springs & Cripple Creek District Ry.	50	
Fort Worth & Denver City Railway	454	
Wichita Valley Railway	257	
Columbus & Southern Railway	23	
Cornwall & Lebanon Railroad	22	
Cumberland Valley Railroad	162	
Denver, Laramie & Northwestern Railway	56	
Denver, Northwestern & Pacific Railway	214	
Dry Fork Railroad	37	441
East Berlin Railway	8	
East Broad Top Railroad & Coal Company	37	
Eastern Kentucky Railway	36	
Emmitsburg Railroad	15	
Frankfort & Cincinnati (Now Louisville & Nash. R. R.)	40	
Frederick R. R. (Formerly Wash., Frederick & Gettysb.)	17	
George's Creek & Cumberland	18	
Glasgow Railroad	10	
Grafton & Upton Railroad	16	
Great Western Railway	48	
Huntingdon & Broad Top Mountain Railroad	53	
Interstate Railroad	6	
Iowa Central Railway	583	
Island Creek Railroad	6	
Kanawha & West Virginia Railroad Company	35	
Kishacoquillas Valley Railroad	9	
Lancaster, Oxford & Southern Railroad	30	
Lexington & Eastern Railway	93	

	Name of Road.	Miles.
	Steam Roads.	
	Ligonier Valley Railroad	10
	Little Kanawha Railroad	29
	Louisville & Nashville Railroad	1,950
	Louisville, Henderson & St. Louis Railway	183
	Manistee & Grand Rapids R. R.	61
	Maryland & Pennsylvania Railroad	77
	Maryland, Delaware & Virginia Railway	85
	Minneapolis & St. Louis Railroad	1,028
	Monongahela Railroad	49
	Muscatine North & South	28
	Missouri & Illinois Brdge. & Belt Railroad	3
	Nelson & Albemarle Railway	6
	Newport & Sherman's Valley Railroad	29
	New Park & Fawn Grove	9
	Narragansett Pier Railroad	8
	New York, Ontario & Western Railway	521
	Newport & Wickford Railroad (Now N. Y. N. H. & H. R. R.)	3
443	New York, New Haven & Hartford R. R.	2,187
	New York, Philadelphia & Norfolk Railroad	120
	Northern Central Railway	470
	Ohio & Kentucky Railway	27
	Ohio River & Western Railway	112
	Pennsylvania Lines—East:	
	Pennsylvania Railroad	3,507
	Pennsylvania Company (Erie & Pittsburgh)	162
	Barnegat Railroad	8
	Pennsylvania Lines—West:	
	Pennsylvania Company	1,175
	P. C. C. & St. L.	1,363
	Grand Rapids & Indiana	582
	Vandalia Railroad	806
	Cincinnati & Muskingum Valley	148
	Cincinnati, Lebanon & Northern	44
	Cleveland, Akron & Columbus	178
	Waynesburg & Washington	28
	Philadelphia, Baltimore & Washington Railroad	698
444	Peoria & Pekin Union Railway	8
	Piney River & Paint Creek	10
	Pittsburgh, Lisbon & Western Railroad	25
	Pittsburgh, Shawmut & Northern Railroad	12
	Pittsburgh, Summerville & Clarion Railroad	15
	Pittsburgh, Westmoreland & Somerset Railroad	27
	Quincy, Omaha & Kansas City Railroad	250
	Richmond, Fredericksburg & Potomac Railroad	116
	Rockport, Langdon & Northern Railway	6
	Sharpsville Railroad	17
	South Manchester Railroad	2
	Stewartstown Railroad	7
	Susquehanna River & Western Railroad	13
	Susquehanna, Bloomsburg & Berwick Railroad	39
	Tabor & Northern Railway	8
	Tionesta Valley	34
	Toledo, Peoria & Western Railway	248
	Tuckerton Railroad	29

Name of Road.	*Miles.*	445
Steam Roads.		
Union Transportation Company	25	
Susquehanna & New York Railroad	58	
Virginia Air Line	30	
Virginia Anthracite Coal & Coke Company	9	
Virginian Railway	460	
West Jersey & Seashore Railroad	58	
do. do.	166	
White Oak Railroad	9	
Western Maryland Railway	529	
Washington, Potomac & Chesapeake Railroad	20	
Winfield Railroad	12	
Worthville Railroad	8	
Total Steam Roads	32,994	

Complainant's Exhibit No. 2, January 11, 1911, J. A. S., Exr.

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Name of Carrier.	*Miles.*	
Electric Lines.		
Conway Street Electric Railway (Mass.)	5	
Lackawanna & Wyoming Valley Railroad (Penna.)	17	
Meadville & Conneaut Lake Traction Company	14	
New Paltz, Highland & Poughkeepsie (New York)	4	
Milford & Uxbridge Street Railway (Mass.)	5	
Oregon Interurban (Missouri)	3	
Parkersburg, Marietta & Interurban (Ohio & W. Va.)	12	
Rhode Island Suburban Railroad	16	
Shelby County Railway (Missouri)	8	
Washington, Baltimore & Annapolis Elec. Ry	58	
West Jersey & Seashore Railroad	58	
do. do.	.34	
Wheeling Traction Company	11	
Total Electric Lines	245	447

Steamboat Lines.	*Miles.*
Baltimore, Chesapeake & Atlantic Ry. Boat	44
Baltimore, Chesapeake & Atlantic Steamer Lines	997
Baltimore Steam Packet Company	180
Chesapeake & Ohio Railroad Boat	15
Goodrich Transit Company	85
Island Transportation Company	8
Maryland, Delaware & Virginia Ry. Boat	27
Maryland, Delaware & Virginia Steamer Lines	700
New York, Philadelphia & Norfolk Railroad Boat	36
New York, New Haven & Hartford R. R. Boat:	
Harlem River to Jersey City	13
New England Navigation Company	666
New London-Block Island Line	29
Newport-Block Island Line	27
New Bedford, Martha's Vineyard & Nantucket Steamboat Co.	53
Newport & Wickford Steamer Line	19

448	Old Dominion Steamship Company	164
	Philadelphia, Baltimore & Washington R. R. Boat	7
	Tolchester Beach Improvement Company	116
	Virginia Navigation Company	120
	Watch Hill Steamboat Company	5
	Total Steamboat Lines	3,304

Complainant's Exhibit No. 3, January 11, 1911, J. A. S, Exr.

Name of Carrier.	*Stage and Wagon Lines.*	*Miles.*
J. S. B. Cochran	Bartow & City Island, New York	3
McCrillis' Express	Boston to Boston Highlands	2
Brewer's express	Boston to Charlestown, Mass	2
Magee's Express	East Boston, Mass	2
449 Dillingham's Express	Jamaica Plains, Mass	5
Parker's Express	Roslindale, Mass	6
Wagon	Brookline, Mass	7
Wagon	Cambridge, Mass	4
Wagon	Holyoke to Springfield, Mass	9
E. T. Curtis	Lenox to Lenox Village, Mass	3
Stage	Eminence to New Castle, Ky	4
Wagon	Lyons to Clinton, Ia	6
J. M. Beck	Sparta to Owenton, Ky	4
Griffith Brothers	Preston to Owingsville, Ky	5
Wagon	Sanders, Ghent & Vevay	11
	Total Stage and Wagon Lines	73

Complainant's Exhibit No. 4, January 11, 1911, J. A. S, Exr.

ADAMS EXPRESS COMPANY.

450 MILEAGE BY STATES AND TERRITORIES.

DECEMBER 31, 1910.

State	*Steam Roads*	*Electric*	*Steamboat*	*Stage*	*Total*
Colorado	1679	....	....	....	1679
Connecticut	1006	....	....	....	1006
Delaware	267	....	....	....	267
Dist. of Col.	5	4	....	....	9
Georgia	216	....	....	....	216
Illinois	2628	....	....	....	2628
Indiana	1733	....	....	....	1733
Iowa	2339	....	....	6	2345
Kansas	260	....	....	....	260
Kentucky	1983	....	....	24	2007
Massachusetts	1008	10	53	40	1111
Maryland	931	54	160	....	1145
Michigan	527	....	8	....	535

Minnesota	426	....	....	....	426	451
Missouri	1390	11	....	....	1401	
Montana	193	....	....	....	193	
Nebraska	2840	....	....	....	2840	
New Jersey	704	92	....	....	796	
New Mexico	81	....	....	....	81	
New York	1065	4	....	3	1072	
North Carolina	12	....	....	....	12	
Ohio	2024	12	....	....	2036	
Pennsylvania	4429	31	....	....	4460	
Rhode Island	207	16	39	....	262	
South Dakota	514	....	....	....	514	
Tennessee	345	....	....	....	345	
Texas	711	....	....	....	711	
Virginia	1342	....	342	....	1684	
West Virginia	1305	11	....	....	1316	
Wisconsin	223	....	....	....	223	
Wyoming	601	....	....	....	601	
Not assignable to States	....	....	2702	....	2702	
Total	32994	245	3304	73	36616	452

Complainant's Exhibit No. 5, January 11, 1911, J. A. S., Exr.

NUMBER OF EMPLOYEES—DECEMBER, 1909.

Classification	*Entire Company*	*In New York Department*	
Agents	5,952	48	
Clerks	3,307	748	
Drivers	2,720	423	
Helpers	1,348	466	
Stablemen	404	150	
Porters	1,506	191	
Transfermen	459		
Messengers	1,639		453
Superintendents & R. Agts.	72		
Department Cashiers, Auditors and clerks	559		
Supply Department	27		
Engineers Bureau	6		
Money Order Department	29		
Treasurer's, Secretary's and General Auditor's Offices	10		
Total	18,038	2,026	

454 **Complainant's Exhibit No. 6, January 11, 1911, J. A. S., Exr.**

The Company's charge is based upon the value of the property, which must be declared by the shipper.

ADAMS EXPRESS COMPANY

(Non-negotiable Bill of Lading.)

61 Broadway, NEW YORK, ... 19

RECEIVED FROM .....

Valued at $.....

MARKED .....

455 Which the Company agrees to carry upon the following terms and conditions, to which the shipper agrees, and as evidence thereof, accepts this bill of lading.

1. In consideration of the rate charged for carrying said property which is regulated by the value thereof and is based upon a valuation of not exceeding fifty dollars for any shipment of 100 pounds or less, and not exceeding fifty cents per pound for any shipment in excess of 100 pounds, unless a greater value is declared at time of shipment, the shipper agrees that the Company shall not be liable in any event for more than fifty dollars ($50), on any shipment of 100 pounds or less, and for not
456 exceeding fifty cents per pound on a shipment weighing more than 100 pounds, and said property is valued at, and the liability of the Company is hereby limited to, the values above stated, unless a greater value is declared at the time of shipment, and charge for value paid or agreed to be paid therefor; and in case of partial loss or damage the Company shall not be liable for more than such proportion of the same as $50, if 100 pounds or less in weight, or fifty cents per pound if weight exceeds 100 pounds, or the value declared, bears to the actual value if greater.

2. If the Express Company has not an agency 457
at the point of destination, it shall carry the property to its agency nearest or most convenient thereto, and there notify the consignee, or deliver the property to some other carrier to continue the transportation. The Adams Express Company shall not be liable for loss or damage occurring after such delivery, nor for detention after having tendered the property to a connecting carrier.

3. The Express Company shall not be required to make free delivery at points where it maintains no free delivery service, nor at any point beyond its established delivery limits.

4. The Express Company, unless negligent, shall 458
not be liable for loss, damage or detention of said property caused by civil or military authority, piracy, insurrection, strikes or riot, or by the act of any person acting as an officer of the law, whether with or without lawful process, warrant or authority, or by the dangers of railroad transportation, the perils of navigation, changes of temperature, heat, cold, wet or decay, nor for the death, injury or escape of live freight, the Company not being a carrier thereof except at owner's risk.

5. Said property is accepted as merchandise only, and the Express Company shall not be liable in any event for the loss of money, specie, bonds, 459
coupons, or other negotiable paper, which the Company does not receive or carry except through its money department provided for that purpose.

6. The Express Company shall not be liable for loss, damage or detention of said property unless a claim therefor shall be presented to it in writing at this office within ninety days from this date with this contract or a copy thereof annexed; nor shall the Company be liable in any suit to recover for the loss, damage or detention of said property unless the same shall be commenced within one year after such loss, damage or detention shall have occurred, and not afterwards.

460 7. Articles of GLASS, articles contained in glass and fragile articles are accepted at OWNER'S RISK.

8. If any C. O. D. is not paid within thirty days the shipper agrees that the Express Company may return the property, and that he will pay the charges for transportation both ways.

9. The terms and conditions of this contract shall apply to any forwarding or return of said property, and shall inure to the benefit of every carrier to whom the same may be entrusted to complete the transportation.

CHARGES ..... FOR THE COMPANY.....

461 Liability limited to $50, for any shipment of 100 lbs., or less, or to 50c. per pound for any shipment in excess of 100 lbs. unless a greater value is declared and paid for or agreed to be paid for at the time of shipment.

Complainant's Exhibit No. 7, January 11, 1911, J. A. S., Exr.

To be issued only for Money, Specie, Bonds, Coupons, or other Negotiable Paper.

The Company's charge is based upon the value, which must be declared by the Shipper.

ADAMS EXPRESS COMPANY.

462 $..... NEW YORK.....191..

RECEIVED FROM.....

.....Sealed and said to contain.....

Valued at .....Dollars,

Addressed .....

.....

.....

Which the Company agrees to carry upon the following terms and conditions, to which the shipper agrees, and as evidence thereof, accepts this bill of lading.

1. In consideration of the rate charged for carrying said property, which is based upon the value thereof above declared, the shipper agrees that the

Company shall not be liable in any event for more 463
than said sum.

2. If the Express Company has not an agency at the point of destination, it shall carry the property to its agency nearest or most convenient thereto, and there notify the consignee, or deliver the property to some other carrier to continue the transportation. The Adams Express Company shall not be liable for loss occurring after such delivery, nor for detention after having tendered the property to a connecting carrier.

3. The Express Company shall not be required to make free delivery at points where it maintains no free delivery service, nor at any point beyond 464
its established delivery limits.

4. The Express Company shall not be liable for loss or detention of said property caused by civil or military authority, piracy, insurrection, strikes or riot, or by the act of any person acting as an officer of the law, whether with or without lawful process, warrant or authority.

5. The Express Company shall not be liable for loss or detention of said property unless a claim therefor shall be presented to it in writing at this office within ninety days from this date, with this contract or a copy thereof annexed; nor shall the Company be liable in any suit to recover for the 465
loss, or detention of said property unless the same shall be commenced within one year after such loss or detention shall have occured, and not afterwards.

6. The terms and conditions of this contract shall apply to any forwarding or return of said property, and shall inure to the benefit of every carrier to whom the same may be entrusted to complete the transportation.

[NOT NEGOTIABLE.]

Charges,.....

For the Company,.....

Liability limited to the valuation declared by the shipper.

466 **Complainant's Exhibit No. 8, January 11, 1911, J. A. S., Exr.**

READ THE MUTUAL CONDITIONS OF THIS CONTRACT to which the Shipper agrees by accepting this receipt containing the same.

ADAMS EXPRESS COMPANY.

NEW YORK,.....19....

RECEIVED FROM.....

..... FOR COLLECTION:

On ..... $.....

..... $.....

..... $.....

467 ..... $.....

If not paid, said paper to be returned to the depositor, only on demand and surrender of this Receipt, and payment of charges.

It is part of the consideration of this contract, and it is agreed that said ADAMS EXPRESS COMPANY are not to be responsible for any loss or damage which may happen to said paper, or its proceeds, while in the charge of any CARRIER or AGENT, to whom the same may be by them entrusted, nor for any loss or damage by Fire, Railroad or Ocean or River Navigation, or from any cause whatever, unless, in every case, the same be proved to have occurred from the fraud or gross negligence of said

468 Express Company or their servants. *And if the said paper or proceeds is entrusted or delivered to any other Express Company or Agent (which said Adams Express Company are hereby authorized to do), such company or person so selected shall be regarded exclusively as the agent of the depositor, and as such alone liable, and the Adams Express Company shall not be, in any event, responsible for the negligence or non-performance of any such company or person.* Said Adams Express Company shall not be liable for any loss or damage which may happen to said paper, or its proceeds, unless the claim for such loss or damage shall be made in

writing, to this office, within thirty days of the 469
above date, in a statement to which this receipt shall be annexed; nor shall said company be under any obligation to protest said paper, unless an instruction so to do is hereon written. It is further agreed, that said Company shall not, in any event, be liable for any loss, damage or detention caused by the acts of God, Civil or Military Authority, or by Rebellion, Piracy, Insurrection, or Riot, or the dangers incident to a time of war, or by any riotous or armed assemblage.

For the Company, ...

[NOT NEGOTIABLE.]

470

Complainant's Exhibit No. 9, January 11, 1911, J. A. S., Exr.

MAYOR'S OFFICE,
BUREAU OF LICENSES,
CITY HALL,
NEW YORK.

LAW DEPARTMENT,
Office of the Corporation Counsel,
NEW YORK, December 9th, 1902.

GEORGE W. BROWN, JR., Esq.,
Chief of the Bureau of Licenses.

SIR: 471

I have your letter of November 6, 1902, in which you ask to be advised in regard to certain questions relative to the licensing of public carts and express wagons.

You ask first if an expressman, having a place of business outside The City of New York and conveying articles from that location to and delivering the same in The City of New York, and also collecting articles for conveyance and delivery outside thereof, requires an express license from The City of New York to do such business as is done therein.

You also ask if an expressman who is licensed

elsewhere is exempt from the operation of the municipal ordinances, requiring a license here, and cite as a specific example the case of an expressman with a Jersey City license delivering packages in New York City, or taking packages from New York City for delivery in Jersey City. You also refer me to the case of the Long Island Express Company, which collects parcels and carries them to some destination beyond the limits of the City.

It is my opinion that the ordinance, sections 18, 19 and 20, apply to an expressman having a place of business outside of The City and conveying articles to a point within The City or to a point beyond The City, providing he passes through the corporation.

Section 18, of the ordinances applies to all express vehicles which convey certain articles "within or through" The City.

It is not, in my opinion, necessary that the express business be confined entirely to the territory included within The City and it is therefore my conclusion that the ordinances apply to the case of the Long Island Express Company. Although no specific charge is imposed for the wagon service of that Company, as distinguished from the car services, a general charge is imposed by the Company for the collection and transportation of express packages and it is to be presumed that that charge also includes the charge for transportation by wagon, as well as by rail.

In the case of the Jersey City expressman, my conclusion is different. It seems to me that the imposition of a license fee and the prescription of rates, as far as they apply to an expressman, who transports packages or other articles from Jersey City, or from any other point without the State, to The City or through The City, would be an attempt to regulate interstate commerce and would, therefore, be unauthorized. It has been decided by the

Supreme Court of the United States and by the 475
Court of Appeals of this State, that in the case of interstate transportation, the Legislature cannot prescribe the charge to be made for even that part of the transportation which is to be performed within the State, Wabash R. R. Co. *v.* Ill., 118 U. S., 557; Peo. Ex rel. Pa. R. R. Co. *v.* Knight, 171 N. Y., p. 357.

You also wish to be advised as to whether a vehicle licensed as a public cart is prohibited from doing an express business and whether a duly licensed express is prohibited from carrying articles which a public cart is allowed to carry.

Section 6, referring to public carts and cartmen, 476
defines a public cart as "a vehicle used to carry merchandise, household furniture or other bulky articles" and no provision is made to compel a public cartman to give a bond. An expressman, under section 18, is permitted to carry packages, parcels and other articles, and the owner of the express wagon is compelled to give a bond. The distinction between a cartman and an expressman seems to be that an expressman is permitted to carry articles of every nature, whether light or bulky, and is compelled to give a bond, while a public cartman is permitted to carry only articles of a bulky nature and no bond is required. I believe that an 477
expressman may act as a cartman, but a cartman has no right to act as an expressman.

Respectfully yours,

(Signed) GEORGE L. RIVES,
Corporation Counsel.

478 **Complainant's Exhibit No. 10, January 18, 1911, J. A. S., Exr.**

CRAVATH, HENDERSON & DE GERSDORFF
No. 52 William Street.

NEW YORK, March 6, 1908.

DEAR SIR:

Referring to the various conferences which have taken place between you and Mr. Bruce, of our office, in regard to the liability of the Adams Express Company to pay wagon licenses: we beg to say that the Express Company, for the purpose of compromising the matter and without prejudice to
479 its legal rights, is willing to renew the licenses upon twenty wagons which it took out last year and to take out licenses for twenty additional wagons.

As has already been stated to you, all of the wagons of the Adams Express Company which are operating in this City are engaged in interstate commerce, that is, in delivering or receiving packages which have come from or are to be delivered without the State of New York. As has also been stated to you, the wagons in addition to being engaged in interstate commerce do carry a certain amount of local business. Under the opinion given by Hon. George L. Rives, as Corporation Counsel,
480 to your predecessor, Hon. George W. Brown, dated December 9, 1902, a copy of which is enclosed, it seems clear that there is no liability upon the part of the Express Company to pay licenses upon its wagons engaged in interstate commerce. We are of opinion that the mere fact that several of these wagons are incidentally engaged in carrying on local traffic does not make them liable for license fees, and have so advised the Express Company. The Express Company, however, has authorized us to make the above proposition as a settlement of the entire matter and has advised us that the number of wagons which they are willing to license

bears a larger proportion to the total number of 481
their wagons than the amount of local traffic carried on by them bears to the total amount of business of the Express Company in Greater New York.

We trust that the above proposition will be satisfactory to you.

Yours very truly,

(Signed) CRAVATH, HENDERSON & DE GERSDORFF.

Hon. J. P. CORRIGAN,
Chief, Bureau of Licenses,
City Hall,
New York City.

E B B

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Complainant's Exhibit No. 11, January 18, 1911, J. A. S., Exr.

MAYOR'S OFFICE,

BUREAU OF LICENSES,
CITY HALL,
NEW YORK.

MARCH 11, 1908.

MESSRS. CRAVATH, HENDERSON & DE GERSDORFF,
52 William Street,
New York City.

DEAR SIRS:

Your communication of March 6, with reference 483
to the licensing of the Adams Express Company's local wagons, was duly received. In reply would say that the proposition made by you is agreeable to us. I would suggest, however, that the twenty additional licenses which they desire, be taken out in Manhattan. The twenty they had last year were issued by our Brooklyn office, whom I have instructed to renew the same at once.

Yours very truly,

(Signed) JOHN P. CORRIGAN,
Chief, Bureau of Licenses.

484 **Complainant's Exhibit No. 12, January 18, 1911, J. A. S., Exr.**

NEW YORK, November 1910.

TO THE CHIEF OF THE BUREAU OF LICENSES,
City Hall,
New York, N. Y.

SIR:

I hereby apply for a license to drive an express wagon in The City of New York.

I certify that I am a citizen of the United States or that I have declared my intention to become a
485 citizen of the United States, and that I reside at .....

I further certify that I am at present employed by .....doing business at ..... and that my last employment was with..... doing business at .....

Respectfully,

.....Applicant.

I hereby certify that I have known..... .....residing at ...., for .... years .... months, and that to my knowledge he is honest, in-
486 dustrious and a competent driver, and I derived this knowledge (here must be stated how the endorsers reach this opinion)..... ....

(Signed) .....
Bus. Address.....
Res. Address.....
(Signed) .....
Bus. Address.....
Res. Address.....

Complainant's Exhibit No. 13, January 18, 1911, J. A. S., Exr. 487

Only Two Supplements to This Tariff
May Be in Force at Any Time.

I. C. C. No. 564.

Cancelling Tariffs and Parts of Tariffs
Specified on Page 2 of This Tariff.

ADAMS EXPRESS COMPANY

LOCAL MERCHANDISE TARIFF

G

This Tariff applies from Common Points and exclusive offices in Section 1 to exclusive offices in Section 2; from exclusive offices in Section 1 to Common Points in Section 2; from Common Points and exclusive offices in Section 2 to exclusive offices in Section 1; and from exclusive offices in Section 2 to Common Points in Section 1. For rates between Common Points see F. G. Airy's I. C. C. No. 1, and consecutively numbered additional issues and supplements thereto and reissues thereof. 488

SECTION 1

Georgia Kentucky North Carolina Tennessee

SECTION 2

Delaware	Missouri	
District of Columbia	New Jersey	489
Illinois	New York	
Indiana	Ohio	
Iowa	Pennsylvania	
Maryland	Virginia	
Michigan	West Virginia	
Minnesota	Wisconsin	

Governed by Official Express Classification F. G. Airy's I. C. C. No. 483, Supplements thereto or reissues thereof and by exceptions to Official Ex-

press Classification I. C. C. No. 548, Supplements thereto or reissues thereof.
Issued January 20, 1910.
Effective March 1, 1910.

APPROVED:
J. ZIMMERMAN,
General Manager.
Issued by
J. E. CRONIN,
Supt. of Traffic,
61 Broadway, New York, N. Y.

[The reverse side is as follows:]

TARIFFS AND PARTS OF TARIFFS CANCELLED BY THIS TARIFF.

This Tariff Cancels I. C. C. Nos. 4, 5, 116, 147, 148, 153, 154, 158, 159, 160, 163, 167, 168, 194, 195, 196, 197, 204, 205, 213, 217, 225, 229, 230, 233, 234, 235, 236, 237, 239, 240, 241, 242, 251, 252, 260, 271, 273, 277, 278, 279, 283, 287, 288, 289, 290, 291, 294, 295, 296, 297, 300, 301, 302, 305, 306, 308, 309, 310, 320, 321, 322, 323, 325, 326, 330, 331, 332, 335, 339, 340, 341, 342, 366, 369, 374, 376, 379, 380, 382, 388, 390, 397, 398, 423, 424, 477, 478, 479, 480, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 553, 554, 555, 556, 557, 558 and 559.

Also Cancels all Local Merchandise Rates between Offices in Section 1 and Offices in Section 2 of this Tariff which are now shown in the Tariffs listed below.

I. C. C. Nos. 3, 6, 9, 10, 23, 25, 52, 138, 139, 155, 157, 203, 209, 210, 214, 216, 220, 221, 222, 223, 246, 248, 249, 257, 262, 264, 284, 298, 299, 307, 318, 324, 327, 328, 329, 368, 373, 378, 391, 392, 394, 395, 399, 495, 496, 497, 509, 510, 518, 533, 547, 550, 551 and 552.

RULES AND REGULATIONS

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RATES.

All rates in this Tariff are in cents per one hundred pounds and apply on shipments of merchandise.

"From any point of origin not named in this tariff, but between any two points of origin named, the merchandise rate will be the same as from the next more distant point that is named.

"To any point of destination not named in this tariff but between any two points of destination named, the merchandise rate will be the same as to the next more distant point that is named."

TERMINAL AND SWITCHING CHARGES.

494

Shipments carried under this tariff are subject to Terminal and Switching Charges shown in F. G. Airy's I. C. C. No. 530, Supplements thereto or reissues thereof, also in I. C. C. No. 549, Supplements thereto or reissues thereof.

COMMODITY RATES.

Wherever commodity rates are named they remove the application of the Classification scale or class rates to the same commodity and between the same points.

ROUTING.

The Adams Express Company in issuing this tariff reserves to itself the right to route all shipments carried at the rates and between the points shown therein.

495

ABBREVIATIONS.

Explanation of Abbreviations—A., American Express Company; C., Canadian Express Company; GN., Great Northern Express Company; LI., Long Island Express Company; N., National Express Company; NBD., New York and Boston Despatch Express Company; Nor., Northern Express Company; P., Pacific Express Company; S., Southern Express Company; Sr., or (Summer), Summer or Season office; U., United States Express Company; W-b., Way-Bill; W., Wells Fargo & Company Express; West., Western Express Company.

496 **Complainant's Exhibit No. 14, January 18, 1911, J. A. S., Exr.**

NEW YORK, Nov. 13th, 1910.

ADAMS EX. CO.

to DOYLE'S, Dr.

LIVERY AND BOARDING STABLES,

510-512 West 56th Street.

7:30 P. M. 1.00 day.

To board 4 horses Nov. 9-10-11-12-13 $16.00

Rec. pay. MARGARET DOYLE by

SARAH COLAHAN, Admx.

Correct for $16.00,

C. E. WILSON,

497 Supt. Wagon Service.

Complainant's Exhibit No. 15, January 18, 1911, J. A. S., Exr.

RECEIPT. DEPARTMENT OF STREET CLEANING.

No. 40504. (Incumbrances)

NEW YORK, Nov. 15, 1910.

Received from Adams X Co.

Fifteen.....Dollars,

For Two wagons,

Taken by police.

11/11/10 WILLIAM H. EDWARDS,

Commissioner of Street

498 Cleaning,

Per BEEDE,

Clerk of Incumbrances.

Complainant's Exhibit No. 16, January 18, 1911, J. A. S., Exr. 499

LETTER HEAD OF MANGIN LIVERY STABLE.
87-89 MANGIN STREET,
NEW YORK. 11/13/1910.

Received $14.00 for 8 days Board, for Team, Horses. From B. B.

JOHNSON,
Mangin Livery Stable,
By ROSENFELD, Pres.

Correct for $14.00
C. E. WILSON,
Supt. Wagon Service.

500

Complainant's Exhibit No. 17, January 20, 1911, J. A. S., Exr.

This license must be displayed so as to be easily visible to the public at all times while engaged in business.

DOCUMENT. $2.50
No. M1735 G. F.

THE CITY OF NEW YORK
LICENSE No. 2601.
MAYOR'S OFFICE—BUREAU OF LICENSES.
NEW YORK, March 14, 1910.

TO ALL WHOM THESE PRESENTS MAY CONCERN: 501

KNOW YE, that Adams Ex. Co. residing at 59-71 Bway in consideration of TWO and 50/100 Dollars, receipt of which is acknowledged, is hereby licensed to KEEP AND USE AN EXPRESS WAGON IN THE CITY OF NEW YORK. When so engaged, displaying the license number indicated above.

EXPRESS RENEWAL (Seal of City of New York)

This license is subject to the strict observance of all laws, ordinances and regulations enacted for the protection of the city so far as they may apply, is to continue in force for a period of ONE YEAR from the date indicated by indenture on the mar-

502 gin, unless sooner suspended or revoked; and is not transferable.

Expiration Date Mar. 13, 1911.

W. J. GAYNOR,
Mayor.

Countersigned
H. F. SCHLUENZEN,
Cashier.

NOT TRANSFERABLE.

Complainant's Exhibit No. 18, January 20, 1911, J. A. S., Exr.

503 STATEMENT OF BUSINESS DONE DURING PERIOD COVERED BY STRIKE AND SAME PERIOD IN 1908 AND 1909.

1908	1909	1910
Oct. 28-Nov. 17,	Oct. 27-Nov. 16,	Oct. 27-Nov. 16,
1-9-0-8	1-9-0-9	1-9-1-0
$502,849.65	$574,729.42	$85,273.01

Complainant's Exhibit No. 19, January 20, 1911, J. A. S., Exr.

STATEMENT OF BUSINESS AT NEW YORK.

	1908.	1909.	1910.
January	$537,081.78	$603,736.35	$636,600.22
February	532,240.96	596,930.00	623,176.85
March	668,321.62	789,372.07	947,240.41
April	709,493.80	784,125.96	853,783.43
504 May	612,891.07	682,145.09	757,047.03
June	584,434.96	650,595.36	725,903.41
July	520,875.65	585,025.89	617,958.12
August	498,024.02	568,111.37	646,960.42
September	673,675.28	737,637.43	818,456.58
October	779,446.42	848,391.46	794,095.59
November	709,431.56	817,894.66	586,821.37
December	824,249.90	871,185.29	897,995.15
	$7,650,167.02	$8,535,150.93	$8,906,038.58

Complainant's Exhibit No. 20*, Jan. 20, 1911, J. A. S., Exr. 505

ADAMS EXPRESS COMPANY.

VALUABLE SHIPMENTS.

From Bedford Depot. NEW YORK, Oct. 27, 1910.
Writer, Bukowski. Caller, Bukowski. Register No. 237

ARTICLE	VALUE	SHIPPER OR ROUTE NO.	NO.	CONSIGNEE	DESTINATION	CHECK Driver	CHECK Clerk
Pkge.	Shoes	M. E.	1	F. S. King	Boston—Mass		
			2				
			3				
			4				
			5				
			6				
			7				
			8				
			9				
			0				
			1				506
			2				
			3				
			4				
			5				
			6				
			7				
			8				
			9				
			0				

No. Pieces, 20. Received by Driver, W. J. Minard. Time, 1.30 P. M.
No. Pieces.... Received by Clerk..... Time M.

☞ ENTER ON SEPARATE SHEET BULKY VALUABLE SHIPMENTS HANDLED AT PLATFORM SCALES.

[*This exhibit consisted of fourteen sheets similar to that printed above, and contained data with respect to 137 shipments similar to that given above with respect to the first of these shipments. All of these shipments, except seven, were consigned to points in New England. These fourteen sheets were dated on different days between October 27, 1910, and November 9, 1910.]

Complainant's Exhibit No. 21, January 23, 1911, J. A. S., Exr. 507

REGULAR WAGONS TURNING OUT OF STABLES, AS SHOWN BELOW.

	Doubles.	*Singles.*	*Autos.*
Jersey City—Day	117	55	...
" " Night	20	14	...
47th Street—Day	28	14	19
" " Night	3	...	7
56th Street—Day	49	20	...
" " Night	1	1	...
124th Street—Day	19	...	8
Furman Street } Bedford Depot }	...	...	34
	237	104	68—409

Regular Drivers	341
Regular Helpers	325
Regular Motormen	68
Regular Conductors	68
Third Men	33
Total	835

508 **Complainant's Exhibit No. 22, Jan. 23, 1911, J. A. S., Exr.**

APPLICATION

FOR

Situation, Accident Release and Indemnity Agreement, and Agreement of Insurance Against Loss by Negligence or Dishonesty,

WITH

ADAMS EXPRESS COMPANY.

RULES GOVERNING EMPLOYMENT BY THIS COMPANY.

Any person desirous of engaging in the service of this Company must, before appointment, *per-*
509 *sonally fill out and fully execute* this form of Application for Situation, and, if required, enter into Bonds with the Company for the faithful discharge of his duties, as per conditions fixed by the Company and in force at date of his employment or as may be fixed from time to time thereafter and made applicable in any renewal of Bond during his employment by Company, and which conditions he is required to inform himself upon.

Persons employed by this Company are hereby notified that they are not engaged for any particular length of time, and the Company reserves to itself the right to terminate the services of any Employe
510 at pleasure; and the party executing this Application does hereby acknowledge and agree to abide by such notice and conditions, and accepts employment subject to being discharged at any time by the Company or its Agents.

APPLICANT'S RECORD.

1. Name (give Christian and *Middle* name in full) .....
2. What is your Post Office address? (Residence) .....
3. Where born.....
   Date ..... Year .....

4. Age.....years. 511
5. Parents' nationality (Father's).....
   Mother's .....
6. How long have you resided in your present locality? .....
7. Married or single .....If married, state how many children you have.....
8. If wife is alive, give her full name and address .....
9. State fully in the following blanks where and how you have been employed during the past TEN years. If employed jointly by a Railroad and an Express Company, name each Company. Show each and every position, and if unemployed, time and reason. 512

TIME OF SERVICE		EMPLOYED AS	IN SERVICE OF Name of Employer or Corporation, and Present Address	SUPERIOR OFFICER Name and Present Address	GIVE REASON FOR LEAVING
From Month and Year	To Month and Year				

10. Have you ever been discharged from any situation?.....If so, state particulars.....
    .....
11. Have you ever applied for bond and been declined? 513
12. Are you required to furnish other security?.....If so, with what Company and for what amount .....
13. Has anything occurred in your past history that would in any manner jeopardize your standing with, or reflect discredit upon this Company in case it was discovered?.....
14. Have you any imperfection of the arms, hands, legs or feet? If so, what.....
15. Are you now in good health?.....
16. Is your eyesight good?.....

514 17. Is your hearing good?.....

18. Have you ever had any serious illness?.....
What..... When..... Where.....

19. What physician attended you?.....

20. Have you ever received any injury?.....
What..... When..... Where.....

21. What surgeon attended you?.....

22. Are your habits sober and temperate and have they always been so?.....

23. Is your life insured? If so, state for what amount, for how long a time, and in what Company, and to whom payable.....
.....

515 24. Give particulars respecting parents and nearest relative, if living, as follows:
Name of Father.....
Address .....
Business.....
Name of Mother.....
Address .....
Name of nearest male relative on Father's side .....Address.....
Name of nearest male relative on Mother's side .....Address.....
.....

25. Give below the names and addresses of not less
516 than FIVE persons, of respectability—owners of property or business men of good standing—who have known you for the past five years, and who are NOT related to you.

	NAME	OCCUPATION	STREET ADDRESS	CITY
1				
2				
3				
4				
5				
6				
7				

26. Bond required for $..... subject to 517
and in accordance with the Rules and Regulations of the Adams Express Company.
Dated at.....State of.....
the..... day of..... 191..
(Signature of Applicant).....
.....

DESCRIPTION OF PERSON EMPLOYED.

(To be made out by Supt., Route Agent or Agent employing.)

Height.....feet.....inches. Form.....
Weight.....lbs. Complexion.....
Color of hair..... Color of eyes..... 518
Kind of nose.....
If any hair is worn on face, in what manner.....
.....
What color .....
State fully any particular marks or deformity that would be readily recognized .....
.....
.....

I hereby certify that to all appearances the above description and foregoing statements are correct.

.....

Supt., Route Agent or Agent employing the Party.

519

REMARKS.

Under this head the Supt., Route Agent or Agent will give any facts he may think worthy of recording for future reference, stating whether the applicant is personally and favorably known to him. If not, whether he is known in the community where he is to be employed, and what his reputation is for honesty, integrity and sobriety.

.....
.....
.....

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of Adams Express Co.,
v.
THE CITY OF NEW YORK and Others.

EDWARD T. PLATT, as Treasurer of United States Express Co.,
v.
THE CITY OF NEW YORK and Others.

WELLS, FARGO & COMPANY
v.
THE CITY OF NEW YORK and Others.

These are three suits, brought each by a separate express company to restrain the City of New York and various public officers therein from seeking to compel the Complainants and their drivers to take out licenses and pay license fees under certain ordinances of the City of New York, on the ground that complainant companies and their drivers are engaged in interstate commerce as common carriers regulated by the Interstate Commerce Act. The situation of each company is substantially the same as that of the others, and the discussion of the cases will be simplified if it be confined to the facts shown in the case first above entitled. The ordinances in controversy will be found in Chapter 7, Titles, 1, 2, 3, and 4 of the Code of Ordinances of the City of New York. (Edition 1910): such of them as are germain to the issues here involved are referred to in the opinion and the full text of the more important sections is reproduced either in the opinion or in a foot-note.

LACOMBE, *C. J.*:

The fairness and conciseness with which the questions at issue have been presented on the briefs, and the frankness with which each side has conceded what is the result of reported decisions bearing upon the general subject-matter of the discussion has greatly lightened the labor of the court, and has made it unnecessary to undertake any extended review of those authorities; practically there is no dispute as to the law of the case.

The express company takes packages of merchandise coming from other states at some railroad or steamer terminal and transports them by its wagons through the streets and avenues to the addresses of the several consignees. It also collects similar packages addressed to consignees in other states from shippers here and in like manner transports them to such terminals to be forwarded to their respective addresses. It is conceded that the local part of this transportation is an incident of the entire transportation and that such transportation is interstate commerce. The company also transports to and from points within this city packages not coming from or addressed to points without this state. It is conceded that so much of its business is not interstate commerce.

The amount of this domestic business is relatively very small, averaging less than one per cent. of its interstate business; with the interstate business only is this court concerned and in this discussion it will be assumed preliminarily at least that there is no intrastate business to be considered.

Not only is the local transportation of interstate packages interstate commerce, and so within the exclusive jurisdiction of the Federal Government, but that Government has actually taken control and regulated such business by express detailed provisions and by giving to the Interstate Commerce Commission very broad powers of regulation. See the Interstate Commerce Act as amended June 29th, 1906, and June 18th, 1910.

In the course of conducting such business, it is necessary for the express company to make use of the public streets, as a thoroughfare for the passage of the wagons it propels under guidance of its drivers, such wagons becoming a part of the traffic in those streets. That the local authorities have full power, under reasonable regulations, to regulate such traffic is not disputed. The Greater New York Charter, Section 50 grants to the Board of Aldermen power to regulate by general ordinances the use of the streets and sidewalks by foot passengers, animals and vehicles, to regulate the speed of vehicles; to make all such regulations in reference to the running of stages, trucks and cars as may be necessarry for the convenient use and accommodation of the streets, etc., etc.

It is conceded by Complainants that the circumstance that their wagons, when using the public streets, are engaged in interstate commerce does not make them immune from the operation of such general ordinances, even though the exigencies of traffic in a congested centre of population may induce a very liberal interpretation of this grant of power. The local authorities may find it necessary not only to adopt and enforce "rules of the road," but also to prescribe regulations as to size and weight of vehicles, as to the details of their construction (such as tire width relative to weight), as to their motive power, as to identifying marks and numbers, as to the qualifications of their drivers, as to registration and licensing of vehicles and drivers, as to inspection and oversight. There is no reason and the court knows of no authority which will exempt the instruments of interstate commerce from regulations of this sort, adopted for the public safety and convenience, with which other vehicles not engaged in such commerce must comply. It is a legitimate exercise of the police power reserved to the States. Complainants make no contention to the contrary; indeed they fully concede the proposition above set forth. It is understood further, that they concede that such fees or charges as may be ratably imposed on all in order to provide the machinery necessary to carry out such regulations cannot fairly be regarded as a tax on interstate commerce, any more than would be the tolls upon a turnpike.

On the other hand, it is conceded by counsel for the defendants that whatever authority may be given by law to the local legislature to regulate business generally or to regulate the business of certain specified classes of persons, qua business, is inoperative to control a

person engaged in interstate commerce, whose business is already regulated by federal law, since the business of such person is within the exclusive jurisdiction of Congress.

With these concessions in mind we may now turn to the specific ordinances in controversy. The Greater New York Charter, Section 51, provides: "Sec. 51. Subject to the constitution and laws of the State, the board of aldermen shall have power to provide for the licensing and otherwise regulating the business of dirt carts, public cartmen, truckmen, hackmen, cabmen, expressmen, car-drivers and boatmen; of boot-blacks, of pawnbrokers, junk-dealers, keepers of intelligence offices, dealers in second-hand articles, hawkers, peddlers, vendors and scalpers in coal freights; of menageries, circuses and common shows; of bone boiling, fat rendering, and other noxious businesses; and shall have power to regulate or forbid the keeping of dogs. The board of aldermen shall also have power to regudate the rates of fares to be taken by owners or drivers of hackney coaches, carriages, motors, automobiles or other vehicles, and to compel the owners thereof to pay annual license fees. All ordinances in relation to any of the matters mentioned in this section shall be general, shall provide for the enforcement thereof in the manner specified in section '44' of this act as amended, and shall fix the license fees to be paid if any. All licenses shall be according to an established form, and shall be regularly numbered and duly registered as shall be prescribed by the board of aldermen."

The Code of Ordinances contains a group of provisions apparently framed under the authority conferred by this section, dealing with the granting and regulation of licenses, and being Chapter 7 of such Code.

A Bureau of Licenses is established and organized, (Title 1, secs. 300-304), it being provided that all licenses issued by such bureau shall show, among other things, the "privileges allowed." It is next provided in sec. 305 that: "The following businesses must be duly licensed as herein provided, namely, public cartmen, truckmen, hackmen, cabmen, expressmen, drivers, junk dealers, dealers in second-hand articles, hawkers, peddlers, vendors, ticket speculators, coal scalpers, common shows, shooting galleries, bowling alleys, billiard tables, dirt carts, exterior hoists and stands within stoop-lines and under the elevated railroad stations." A penalty of not less than $2, nor more than $25, for each offense is imposed upon any person "who shall engage in or carry on any such business without a license therefor," sec. 306. The term of the license and its suspension or revocation are provided for in sec. 307, and the amount of annual license fees is provided in Sec. 308 (printed in foot-note infra) a separate fee is charged for each cart, hack, or express wagon, which is a convenient method of making the tax imposed conform to the amount of business done, there being in like manner a separate fee charged for each table in a billiard room and for each chair in a boot-black stand. Renewals of licenses are provided for in sec. 309.

The next article, 3 (sec. 310-360) deals with special regulations and rates. Under the first three subdivisions sec. 310-329 are

grouped "Public Carts and Cartmen" and "Public Hacks and Hackmen." A "public cart" is defined by sec. 310 as "Every vehicle of whatever construction, drawn by animal power or propelled by other motive power, which shall be kept for hire or used to carry merchandise, household furniture, or other bulky articles within the City of New York for pay." The owner thereof is declared to be a "public cartman." There is no separate provision in the Code for "truckmen," enumerated in sec. 51 of the Charter and in sec. 306 of the Ordinances: evidently it was assumed that there was no real distinction to be drawn between a cart and a truck. It is provided that every public cart shall show on each outside thereof identifying marks and an official number (sec. 311); and that the amount to be charged for loading, transportation and unloading may be agreed upon in advance, and such contract shall control (sec. 312). The legal rates "for moving household furniture," unless otherwise mutually agreed are prescribed in sec. 313 (printed in the footnote); but there seems to be no prescribed rates for articles not properly "household furniture." To secure payment of his "legal rate of transportation," a public cartman is given a lien, and provision made as to enforcing it (sec. 314).

Sec. 315 provides that: "Every person driving a licensed hack or express, other than the person named in the license therefor, shall be licensed as such driver, and every application for such license shall be indorsed, in writing, by two reputable residents of The City of New York certifying to the competence of the applicant."

Subdivision- 3 and 4 (sec. 316-329) regulate "Public Hacks and Hackmen," the word "hacks" including both "cabs" and "coaches" for transporting persons, and the term "hackmen" including owner or driver, or both (sec. 316). There are provisions as to hackstands and the use thereof. The legal rates of fare for cabs and coaches, both mileage and hourly, are specifically fixed, with right to exact payment in advance. We find provisions for marking and numbering the vehicles, for the disposition of property lost or left therein, and for the settlement of disputes as to the lawful rate of fare, where no agreement has been made.

Sec. 325 provides that "All vehicles for hire shall be licensed, and the owner thereof shall pay the sum of two dollars with his original application as the license fee for each and every vehicles so kept for hire and one dollar for each vehicle for annual renewals." It is difficult to see to what "vehicles for hire" this can apply, in view of the specific provisions as to "public carts," "public hacks" and "public expresses" found elsewhere in the Chapter. Possibly it may apply to vehicles supplied to customers by livery stables.

Subdivision 4*a* (sec. 329*a* to 329*k*) deals with Public Porters, requiring licenses and the wearing of a badge, and regulating the manner in which they shall conduct their business, and the rates they may charge.

Subdivision 5 deals with Expresses and Expressmen. It reads as follows:

SEC. 330. Every vehicle of whatever construction kept or used for the conveyance of baggage, packages, parcels and other articles

within or through The City of New York for pay, shall be deemed a public express, and the owner thereof shall be deemed a public expressman, and the term expressman shall be deemed to include any common carrier of baggage packages, parcels or other articles within or through The City of New York.

SEC. 331. Every public express shall show on each outside thereof the word "Express," or the letters "Exp.," together with the figures of its official number.

SEC. 332. Every owner of a public express shall give a bond to The City of New York for each and every vehicle licensed in a penal sum of $100 with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express.

SEC. 333. The legal rates for regular deliveries, unless otherwise mutually agreed, shall be as follows in the city:

Between points within any borough:

Not more than five miles apart, each piece	$0.40
Not more than ten miles apart, each piece	.55
Not more than fifteen miles apart, each piece	.75

Between points in different boroughs: One-half the above rates in addition.

Special deliveries at rates to be mutually agreed upon.

In Subdivisions 5 to 16 (secs. 334-359) are found provisions regulating in more or less detail the following businesses: Junk Dealers, Dealers in Second-Hand Articles, Peddlers, Ticket Speculators, Coal Scalpers, Common Shows, Shooting Galleries, Bowling Alleys, Billiard Tables, Dirt Carts and Cartmen and exterior hoists. Article 4 deals with stands within the Stoop Lines and under Elevated Railroad Stations.

Title 3 (Sec. 373-378) deals with General Regulations and Complaints, License fees received from hackmen, dealers in junk and second-hand articles and for stands within stoop-lines are to be paid into the Sinking Fund and all other license fees into the City Treasury. All licensed vehicles and places of business shall be regularly inspected. Sec. 374 (printed in the foot-note). Licenses must be exhibited on demand; the identifying marks prescribed for licensed vehicles are to be permanently and conspicuously affixed; fines of not more than $5 may be imposed by the Chief of the Bureau of Licenses. Further penalties for violation of the regulations are provided in section 379, printed in the foot-note. A few preliminary points which have been raised may be first disposed of. It has been suggested that the form, arrangement and language of the group of ordinances above cited indicate that the Board of Aldermen which passed them was undertaking to exercise the power conferred by section 51, and was not acting under section 50 of the Charter. This may be so, but it is not material to enquire into the mental processes of the members of a past and gone legisla-

tive body. If some one or more of its enactments are such as it had authority to pass under some specific grant of power, it will not fail because it was voted for under the supposition that authority was given under some different grant of power, not broad enough to warrant such enactment.

It is shown that for years past and with these ordinances in the Code the express company has not (until just prior to the bringing of this suit) been required to take out licenses for the conduct of its interstate business, or to employ only licensed drivers for its wagons engaged in interstate commerce, or to conform to any tariff charges prescribed, nor has there ever been any inspection of its premises or vehicles.

It has, however, taken out licenses for wagons and drivers engaged in conducting its intrastate business. This indicates a practical construction of the ordinances in consonance with complainants' interpretation of them, which might help to turn the scales in a doubtful case but which certainly cannot control, if some particular ordinance is found to be valid and applicable.

This discussion is much simplified by the manner in which it comes up. The application is for a preliminary injunction. Such relief is not granted unless it is apparent that some irreparable damage to the complainant will result if — is postponed till final hearing. As to nearly all the provisions complained of no such damage is shown. The amounts of license fees prescribed for wagons and drivers may be paid under protest, without inconvenience, and no irreparable damage will result from filing the bonds required; no harm will result from marking the wagons with their license numbers, or from allowing the city officials to inspect premises or vehicles. No attempt has been made to regulate the rates to be charged and collected for transportation of interstate packages, nor is any such attempt threatened. The defendants concede that where such rates are not disapproved by the Interstate Commerce Commission the City authorities have nothing to do with them.

It does appear, however, that if the provisions requiring all express wagons to be driven only by drivers licensed as required by sec. 315 are enforced, the ability of the express company to discharge its duties as a common carrier engaged in interstate commerce may be seriously interfered with. A determination, therefore, of the questions raised as to this section is appropriate at this stage of the case.

That section requires that the drivers of certain vehicles therein specified must be licensed, which is calculated to ensure their identification, and that their application for license must be accompanied by a certificate in writing by two reputable residents "to the competence of the applicant," which to some extent—however slight—would tend to secure more careful drivers. If this ordinance were enacted under sec. 50 of the Charter and by its terms applied to all persons driving vehicles in the streets Complainants, on their own statement, would not be here asserting immunity from its provisions. As we have seen it makes no difference under which section of the Charter the Board of Aldermen undertook to act; if the

ordinance is such as they were authorized to enact under any section, and they have enacted it, it will stand. The only question is whether the particular ordinance is so special that it must fall, either because it is not a "general ordinance" which alone are authorized by sec. 50, or because it makes discriminations not to be tolerated under the Fourteenth Amendment to the Constitution of the United States.

Obviously the ordinance is not of universal application; it does not require the drivers of all vehicles to be licensed after a certification as to competency. No doubt it would be a great boon to pedestrians who have to use the streets if such a measure of protection against reckless driving were secured to them, but this ordinance does not go to any such length. It deals only with a relatively small class of drivers. As we have seen the only carts which are required to be licensed are those used by their owners to transport the goods of other persons for pay (sec. 310). Inasmuch as all licensed vehicles are required to be conspicuously marked, a few hours' walk through the business thoroughfares of the city will give some idea of the relatively small number of vehicles which are within the terms of the ordinances. All carts and trucks used by wholesale dealers, by building contractors, breweries, department stores and in a host of other employments—some of them of larger size and a greater menace than any operated by public cartmen or expressmen—are wholly without the purview of this ordinance.

It may be that the class covered by this ordinance is still further restricted. The ordinance is limited in terms to "every person driving a licensed hack or express." By definition (Sec. 310-316) the "public cartmen" whose vehicles must be licensed is operating neither a hack nor an express, so that sec. 315 does not require the person driving his vehicle to be licensed. Sec. 308 provides that the annual license fee for each driver of any licensed vehicle shall be fifty cents; but that may fairly be construed as prescribing only the amount which shall be paid by drivers who are required to be licensed; what drivers shall be licensed being provided for elsewhere. If this construction be correct, the only drivers of carts for the conveyance of goods who are required to be licensed are those who drive express wagons; the drivers of the public carts of "public cartmen" are immune. Such a construction, however, is somewhat doubtful, and since no such interpretation is contended for by the complainants, it will be assumed for the purposes of this case that sec. 315 requires licensed drivers for all public hacks and for all carts or wagons whose owners carry articles owned by others for pay.

This class which includes the truckmen, cartmen, expressmen and hackmen, is apparently a small one, relatively to the total traffic in the streets; but it is not a class arbitrarily constituted, the line of cleavage between it and the residue of the traffic carried on by owners of the vehicles transporting their property and persons is a natural one. It is quite conceivable that some good reason may be shown for a separate classification; it is suggested on defendant's brief that the drivers of the one class are readily differentiated from those of the other classes by the circumstance that they name the

charges for service to customers, collect the amounts due and may contract in some instances for special rates. However this may be the federal courts are not astute to find improper classification where the state has undertaken, in the exercise of its police power, to differentiate between different classes. There must be a very clear showing of inequality, (as in Yick Wo v. Hopkins, 118 U. S. 356) to warrant their interposition. In the case at bar this court is not now prepared to hold that the discrimination between the drivers provided for in sec. 315 and all other drivers is so arbitrary as to require the condemnation of the section under the Fourteenth Amendment. As to the suggestion that Chap. 50 of the Charter forbids the passage of special ordinances, it is sufficient to say that an ordinance covering all instances of a certain class may be a "general" one although it may not be universally applicable to all classes.

It is further suggested that the section should be condemned because it leaves the question, who shall be licensed, to the arbitrary and unqualified discretion of the Mayor, who may revoke any driver's license at his own will, without assigning any reasons for such action, sec. 307. A similar objection was raised before this court in Engel v. O'Malley (opinion filed Aug. 31, 1910, not yet reported). There a statute was criticized because it apparently confided the issuing of a license to the arbitrary discretion of the State Comptroller. Of this criticism it was said: "it is sufficient to say that the terms (of the Statute) may be construed either way; that is, as giving such officer the power capriciously to refuse a license, or as giving him the power to refuse only in the honest exercise of a reasonable discretion. In the absence of a decision by the State Court of last resort construing the language of the Statute, it must be assumed that the latter is the correct interpretation, because otherwise the act would be unconstitutional and it must be assumed that the legislature intended to keep its enactments within the limits fixed by the Constitution."

The motions are denied.

FOOT-NOTE.

The following sections of the Ordinances, which are cited in the foregoing opinion, are printed in full in this foot-note, for convenience of reference.

"SEC. 308. The annual license fees shall be as below enumerated:

For each public cart or truck	$2.00
For each public hack coach	3.00
For each public hack cab	2.00
For each special hack coach	5.00
For each special hack cab	3.00
For each express wagon	5.00
For each junk shop or dealer	20.00
For each dealer in second-hand articles	25.00
For each junk cart or boat	5.00
For each peddler using horse and wagon	8.00

For each peddler using push cart	4.00
For each peddler carrying merchandise	2.00
For each ticket speculator	50.00
For each coal scalper	250.00
For each common show	25.00
For each public shooting gallery	5.00
For each public bowling alley	5.00
For each public billiard table	3.00
For each dirt cart	1.00
For each general hoisting	25.00
For each special hoisting	1.00
For each fruit or soda water stand, or both	10.00
For each newspaper or periodical stand, or both, and in addition also fruit or soda water, or both	15.00
For each movable newspaper stand	1.00
For each newspaper and periodical stand, or both	5.00
For each chair of a bootblack stand	5.00
For each stand under elevated railroad stations	10.00
For each driver of any licensed vehicle	0.50

SEC. 313. The legal rates for moving household furniture, unless otherwise mutually agreed, shall be as follows:

For a single truck load, within two miles	$2.00
For every additional truck load, within two miles	0.50
For loading, and unloading and housing to ground floor	.50
For each flight of stairs, up or down	.25
For double truck load, within two miles	3.00
For every additional mile or part thereof	1.00
For loading, unloading and housing to ground floor	.50
For every flight of stairs, up or down	.50

SEC. 374. The mayor shall have power to appoint inspectors in the Bureau of Licenses to see that the provisions of this ordinance are fully and properly complied with; and all licensed vehicles and places of business shall be regularly inspected, and the result of such inspection shall be indorsed on the official license therefor, together with the date of inspection and the signature of the inspector, and all inspections shall be regularly reported to the Bureau of Licenses.

SEC. 379. Except as hereinbefore otherwise provided, no person shall violate any of the regulations of this ordinance under a penalty of not less than two dollars or more than ten dollars for each offense. No such violation shall be continued under a penalty of one dollar for each day so continued. Any person engaging in or carrying on any business herein regulated without a license therefor, or any person violating any of the regulations of this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction thereof by any magistrate, either upon confession of the party or competent testimony, may be fined not more than two dollars ($2) for each offense, and in default of payment of such fine may be committed

to prison by such magistrate until the same be paid; but such imprisonment shall not exceed ten days."

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Dec. 22, 1910. John A. Shields, Clerk.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Complainant,
vs.
THE CITY OF NEW YORK AND OTHERS, Defendants.

EDWARD T. PLATT, as Treasurer of the United States Express Company, Complainant,
vs.
THE SAME, Defendant.

WELLS, FARGO & COMPANY, Complainant,
v.
THE SAME, Defendant.

This cause comes here upon final hearing of bill in equity to restrain the enforcement of certain ordinances passed by the Board of Aldermen of the City of New York.

LACOMBE, *C. J.*:

These ordinances were fully discussed in the opinion filed in disposing of the motions for preliminary injunction in these three suits. 183 F. R. 793. Much testimony has been taken but it merely establishes by competent proof what the court assumed to be the facts when the former decision was made. Neither the new proof nor the exhaustive briefs which are now presented have induced the court to reach a different conclusion upon the main features of the case from that already expressed.

It may be taken for granted that when the group of Ordinances contained in Chapter 7 were enacted,—if they were enacted as a single piece of legislation, which we may assume to have been the fact—the Board of Aldermen had primarily in mind the licensing and otherwise regulating certain specified businesses included in the enumeration of Sec. 51 of the Greater New York Charter. It is difficult to see how any one can read the first two sections without reaching this conclusion. Sec. 305 provides that "the following businesses must be duly licensed, as herein provided;" and Sec. 306 provides that "no person shall engage in or carry on any such business without a license thereof" under certain specified penalties. "Expressmen" are included in the enumeration of Sec. 305, but it is abundantly settled by authority that a person engaged in conducting an interstate express cannot be required by the local or state authorities to take out a local license as a prerequisite to conducting such interstate business in such locality.

Complainant, therefore, is entitled to an injunction restraining defendants from taking any action to enforce complainant's compliance with the provisions of these two ordinances.

Incidentally as part of the local legislation embodied in this chapter of the Ordinances, regulations as to the use of the streets were adopted. They provide, among other things, that wagons used in express business shall be licensed and marked with the word "express" and their official numbers and shall be regularly inspected by city inspectors, a license fee of $5. being charged for each wagon. It is further provided that the drivers of each of such wagons shall be licensed upon certificate as to competency, shall exhibit their official licenses on demand and shall report any change of residence to the Bureau of Licenses. A license fee of fifty cents is required for each driver. The Court has no doubt that it was within the power of the Board of Aldermen to prescribe such regulations, and believing these provisions to be clearly separable from those which regulate generally the doing of an express business (Willcox v. Consolidated Gas Co.) must decline to interfere with their enforcement for reasons sufficiently set forth in the former opinion. The amount of license fee charged is so small that it may fairly be considered merely as providing for the cost of oversight and inspection.

It is also thought that the provision (Sec. 322) requiring a bond to be given for each licensed vehicle in the penal sum of $100. conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles is a legitimate exercise of the police power, which is not to be condemned because it affects interstate commerce.

When the cause was considered on the application for preliminary injunction the use of automobiles by one of these express companies was not discussed. It now appears that the Adams Express Company operates upwards of 90 automobiles; the drivers of these are chauffeurs. The state has itself taken charge of the regulation of these high-powered machines in public thoroughfares; the vehicles themselves and the chauffeurs are licensed by the State. Chapter 374 of the Laws of 1910 provides that "local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner or chauffeur, to whom this article is applicable, any tax, fee, license or permit for the use of the public highways, or excluding any such owner or chauffeur from the free use of such public highways—and no ordinance, rule or regulation contrary to, or in any wise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect."

These express company automobiles and chauffeurs have been duly licensed by the State. It is not quite clear whether or not defendants are seeking to require additional licenses for such vehicles and drivers to be taken out under the ordinances; but, if they are doing so injunction may issue covering all such vehicles and drivers as hold state licenses.

Let a decree be entered in accordance with the views above expressed.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Jun- 20, 1911. John A. Shields, Clerk.

At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Judicial Circuit, Held at the United States Court Rooms in the Borough of Manhattan, on the 29th Day of June, 1911.

Present:

Hon. E. H. Lacombe, Circuit Judge.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

v.

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and James C. Cropsey, as the Police Commissioner of the City of New York, Defendants.

Final Decree.

This cause having come on for final hearing upon the amended bill of complaint, the answer thereto, the replication, and the proofs oral and documentary duly taken and filed herein,

Now, therefore, upon consideration thereof, and after hearing W. D. Guthrie, of counsel for Complainant, in support of the bill, and William B. Hale, of counsel for Defendants, in opposition thereto, and due deliberation having been had, it is ordered, adjudged and decreed:

First. That Sections 305 and 306 of Chapter 7 of the Code of Ordinances of the City of New York are inoperative and void as an interference with interstate commerce, so far as they purport to require complainant herein to take out a local license as a prerequisite to conducting its interstate express business in the city of New York, and that a writ of injunction issue herein perpetually enjoining and restraining the defendants herein, and each of them, from taking any action to compel complainant to take out such a license under said sections.

Second. That Sections 308, 315, 330, 331, 332, 374, 375 and 376 of Chapter 7 of the Code of Ordinances of the State of New York, so far as they provide that wagons used in the express business shall be licensed and marked with the word "Express," or the letters "Exp." together with their official number, and shall be regularly inspected by city inspectors, and that a license fee of Five Dollars ($5) shall be paid for each wagon, and that the drivers of each of said wagons shall be licensed upon a certificate as to competency, and shall exhibit their official licenses on demand, and report any change of residence to the Bureau of Licenses, and that a license fee of Fifty (50) cents shall be paid for each driver and that a bond shall be given for each licensed vehicle in the penal sum of One Hundred Dollars ($100) conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles entrusted to the owner or driver of said licensed vehicles, are valid

enactments and not an unlawful interference with interstate commerce, and that an injunction restraining the enforcement of said sections of said ordinance against the complainant be, and the same is hereby, denied.

Third. That said city ordinances so far as they require automobiles used in the express business, and the drivers or chauffeurs thereof, to be licensed are inconsistent with and superseded by Chapter 374 of the Laws of 1910 of the State of New York, and that a writ of injunction issue herein perpetually enjoining and restraining defendants, and each of them, from in any manner requiring additional licenses to be taken out under said ordinances for such express automobiles and chauffeurs as hold licenses from the State of New York.

Fourth. That no costs be recovered by either party as against the other.

Enter:

E. HENRY LACOMBE,
Circuit Judge.

Copy Received June 23, 1911, Guthrie, Bangs & Van Sinderen.—U. S. Circuit Court, Southern District N. Y. Filed June 29, 1911. John A. Shields, Clerk.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and James C. Cropsey, as Police Commissioner of the City of New York, Defendants.

On reading and filing the annexed consent of Rhinelander Waldo, and of the Solicitors for the above named complainant and defendants, dated June 26, 1911, it is

Ordered, that Rhinelander Waldo, as Police Commissioner of the defendant, The City of New York, be and he hereby is substituted as defendant herein, in place of James C. Cropsey, who has resigned from the office of Police Commissioner of the said City, without prejudice to the proceedings already had.

Dated New York, June 27, 1911.

E. HENRY LACOMBE,
Circuit Judge.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of the Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and James C. Cropsey, as the Police Commissioner of the City of New York, Defendants.

I, Rhinelander Waldo, Police Commissioner of the defendant, the City of New York, do hereby consent and agree that an order be made and entered in the above entitled suit substituting me as defendant in the above entitled suit in place and stead of my predecessor in office, the defendant James C. Cropsey, resigned, and I adopt the answer heretofore filed on his behalf and all the proceedings heretofore had in this suit as fully to all intents and purposes as if I had been named originally as a party defendant.

Dated New York, June 26, 1911.

R. WALDO.

We hereby consent to the entry of an order substituting as party defendant in place of James C. Cropsey former Police Commissioner of the City of New York, Rhinelander Waldo the present Police Commissioner of the said City, without prejudice to the proceedings heretofore had in the above entitled suit.

Dated New York, June 26th, 1911.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for Complainant.

A. R. WATSON,
Per W. B. H., *Solicitor for Defendants.*

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Jun- 27, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Defendants.

Petition for Appeal.

The above named complainant conceiving himself aggrieved by so much and such part of the decree made on the 29th day of June,

1911, and entered on the 30th day of June, 1911, in the above entitled cause, as denies him the relief prayed for in the bill of complaint filed herein, does hereby appeal from so much and such part of said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, may be presented to the Supreme Court of the United States.

Dated, New York, July 17, 1911.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for Complainant.
WILLIAM M. BARRETT, *Complainant.*

The foregoing claim of appeal is allowed.
Dated, New York, July 17, 1911.

H. G. WARD,
Circuit Judge.

A copy of the within paper has been this day received at the office of the Corporation Counsel. Jul- 17, 1911, Archibald Watson, Corporation Counsel.—U. S. Circuit Court, Southern District N. Y. Filed Jul- 17, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Defendants.

Assignment of Errors.

The complainant prays an appeal from the decree of this court to the Supreme Court of the United States, and assigns for error the following:

First. That the court erred in denying the complainant a perpetual injunction restraining the enforcement of sections 308, 315, 330, 331, 332, 374, 375 and 376 of Chapter 7 of the Code of Ordinances of the City of New York.

Second. That the court erred in refusing to hold that said sections of the ordinance are unconstitutional and void as an interference with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Third. That the court erred in holding that said sections of the ordinance are severable from sections 305 and 306 of the same chapter of the said Code of Ordinances of the City of New York which it held unconstitutional and void as an attempt to regulate and interfere with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Fourth. That the court erred in refusing to hold that so much of section 379 of the Code of Ordinances of the City of New York as provides that any person engaging in or carrying on the express business without a license therefor shall be deemed guilty of a misdemeanor, is unconstitutional and void as an interference with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Fifth. That the court erred in refusing to hold that sections 305, 306, 307, 308, 315, 330, 331, 332, 333, 373, 374, 375, 376, 378 and 379 of Chapter 7 of the Code of Ordinances of the City of New York constitute a single and inseparable scheme of municipal legislation whereby it is sought to regulate and interfere with the interstate business of the express companies, and as such are wholly unconstitutional and void because an interference with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Sixth. That the court erred in refusing to hold that sections 308, 315 and 374 of Chapter 7 of the Code of Ordinances of the City of New York constitute an arbitrary and unlawful discrimination against express companies, deny to them the equal protection of the laws and deprive them of their property without due process of law in violation of the provisions contained in the Fourteenth Article of Amendment to the Constitution of the United States.

Wherefore complainant prays that the decree of the said Circuit Court in so far as it denies the complainant an injunction restraining the enforcement of the aforesaid sections of the Code of Ordinances of the City of New York be reversed.

GUTHRIE, BANGS & VAN SINDEREN,
Solicitors for Complainant.
WILLIAM M. BARRETT, *Complainant.*

A copy of the within paper has been this day received at the office of the Corporation Counsel. Jul- 17, 1911, Archibald R. Watson, Corporation Counsel.—U. S. Circuit Court, Southern District N. Y. Filed Jul- 17, 1911. John A. Shields, Clerk.

Bond.

NOTE.—On July 17, 1911, the Complainant filed a Bond in the sum of $250.00 for damages and costs on appeal and said Bond was approved by Judge Ward.

THE UNITED STATES OF AMERICA, *ss:*

To the City of New York, William J. Gaynor, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, on the 14th day of August, 1911, next, pursuant to an appeal, duly allowed by the Circuit Court for the Southern District of New York, and filed in the clerk's office of said court on the 17th day of July, 1911, in a cause wherein William M. Barrett, as president of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company, is the appellant, and you are the appellees, to show cause, if any there be, why the decree in so far as rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District above named, this 17th day of July, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-sixth.

H. G. WARD,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[Endorsed:] Eq. 6/239. E. & A. D. 3284. Supreme Court of the United States. William M. Barrett, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company, Appellant, against The City of New York, William J. Gaynor, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Appellees. Original citation. William D. Guthrie, Solicitor for Appellant, 44 Wall Street, New York City, Borough of Manhattan. U. S. Circuit Court, Southern District, N. Y. Filed Jul- 17, 1911. John A. Shields, Clerk. A copy of the within paper has been this day received at the Office of the Corporation Counsel Jul- 17, 1911. Archibald R. Watson, Corporation Counsel.

Circuit Court of the United States for the Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Defendants.

Petition for Appeal and Allowance Thereof.

The above named defendants conceiving themselves aggrieved by the final decree herein, dated the 29th day of June, 1911, and entered in the office of the clerk of said court on the 30th day of June, 1911, in the above entitled cause hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and pray that their said appeal may be allowed and that the bond on appeal presented herewith may be approved and that a citation issue, directed to the above named complainant, commanding him to be and appear before the said Supreme Court of the United States upon the return day thereof, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be transmitted to said Supreme Court of the United States and that upon the filing of said appeal bond all further proceedings in this court be suspended until the determination of said appeal by said Supreme Court of the United States, to the end that said decree of this court may be reversed and such decree made as to said Supreme Court of the United States may seem just.

Dated, New York, August 3rd, 1911.

WILLIAM B. HALE,
Counsel for Defendants-Appellants,
40 Wall Street, New York, N. Y.

Appeal allowed and ordered accordingly.
Dated, New York, August 3, 1911.

H. G. WARD,
Circuit Judge.

(Endorsed:) Copy Received Aug. 3, 1911. Guthrie, Bangs & Van Sinderen, Solicitors for Complainants.—U. S. Circuit Court, Southern District N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, as Mayor of the City of New York, and Rhinelander Waldo, as Police Commissioner of the City of New York, Defendants.

Assignment of Errors.

Now come the above-named defendants and appellants herein and say that in the record and proceedings of said court herein, and in the decree made herein and dated the 29th day of June, 1911, and entered in the office of the clerk of said court on the 30th day of June, 1911, there is manifest error in this, to-wit:

First. That the court erred in finding and decreeing that Sections 305 and 306 of Chapter 7 of the Code of Ordinances of the City of New York are inoperative and void as an interference with interstate commerce to any extent, and in enjoining the defendants herein from taking any action to compel complainant to take out a license under said sections, instead of construing said sections in connection with the other sections of the same ordinance, held valid by the court, and as so construed upholding said Sections 305 and 306 as valid and constitutional enactments.

Second. That the court erred in construing said ordinances as purporting to require of the complainant a local license as a pre-requisite to conducting an interstate express business in the City of New York.

Third. That the court erred in granting an injunction restraining defendants from compelling complainant to take out a local license as a pre-requisite to conducting an interstate express business in the City of New York, because it appears without contradiction that defendants have never attempted or threatened to require such a license and claim no right to require such a license.

Fourth. That the court erred in holding and decreeing that said Code of Ordinances of the City of New York so far as they require automobiles used in the express business, and the drivers or chauffeurs thereof to be licensed, are inconsistent with and superseded by Chapter 374 of the Laws of 1910 of the State of New York, and in granting an injunction restraining defendants from in any manner requiring additional licenses to be taken out under said ordinances for such express automobiles and chauffeurs as hold licenses from the State of New York.

Fifth. That the court erred in granting any relief against the defendants.

Sixth. That the court erred in not dismissing the bill of complaint for want of equity.

Seventh. That the court erred in not dismissing the bill of complaint upon the merits, with costs.

Wherefore, defendants and appellants pray that the said decree of the said Circuit Court of the United States for the Southern District of New York, for the errors aforesaid, be reversed and that the said court be instructed to enter a decree dismissing the bill of complaint herein upon the merits and for such other relief as may be just.

WILLIAM B. HALE,
Counsel for Defendants-App'l'ts,
40 Wall Street, New York, N. Y.

Dated, New York, August 3rd, 1911.

(Endorsed:) Copy received Aug. 31, 1911. Guthrie, Bangs, & Van Sinderen, Solicitors for Complainant.—U. S. Circuit Court, Southern District N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

Bond.

NOTE.—On August 4, 1911, the Defendants filed a Bond in the sum of $250.00 for damages and cost on appeal and said Bond was approved by Judge Ward.

THE UNITED STATES OF AMERICA, *ss:*

To William M. Barrett, as President of the Adams Express Company, Individually and as a Shareholder in said Company, Suing in Behalf of Himself and All Other Members and Shareholders of said Company, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be held in the City of Washington, District of Columbia on the 28th day of August, 1911, next, pursuant to an appeal duly allowed by the Circuit Court of the United States for the Southern District of New York, and filed in the Clerk's office of said court on the 3rd day of August, 1911, in a cause wherein the City of New York, William J. Gaynor, as Mayor of the City of New York, Rhinelander Waldo as Police Commissioner of the City of New York are the appellants, and you are the appellee, to show cause, if any there be, why the decree in so far as rendered against said appellants as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named this 3rd day of August in the Year of our Lord 1911, and of the Independence of the United States one hundred and thirty-sixth.

H. G. WARD,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[Endorsed:] Eq. 6/239. E. & A. D. 3289. Circuit Court of the United States, Southern District of New York. William M. Barrett, as President of the Adams Express Company, etc., Com-

plainant, v. The City of New York et al., Defendants. Citation on appeal. William B. Hale, Counsel for Defendants-Applnts., 40 Wall Street, New York City. Due and timely service of the within paper is hereby admitted this 3rd day of August, 1911. Guthrie, Bangs & Van Sinderen, Solicitors for Complainant. U. S. Circuit Court, Southern District, N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to 215 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled, William M. Barrett, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company, Complainant-Appellant, against The City of New York, William J. Gaynor, as Mayor of the City of New York and Rhinelander Waldo, as Police Commissioner of the City of New York, *Defen* Defendants-Appellees, and William M. Barrett, as President of the Adams Express Company, individually and as a shareholder in said Company, suing on behalf of himself and all other members and shareholders of said Company, Complainant-Appellee, against The City of New York, William J. Gaynor, as Mayor of the City of New York and Rhinelander Waldo, as Police Commissioner of the City of New York, Defendants-Appellants, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 14th day of August, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the said United States the One Hundred and Thirty-sixth.

[Seal of the Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

[Endorsed:] United States Supreme Court. William M. Barrett, as President of the Adams Express Company, etc., Complt.-Appellant, vs. The City of New York et al., Def'ts-Appellees. William M. Barrett, as President of the Adams Express Company, etc., Complt.-Appellee, vs. The City of New York et al. Def'ts-Appellants. Transcript of Record. Appeal from the Circuit Court of the United States for the Southern District of New York.

Endorsed on cover: File No. 22,840. S. New York C. C. U. S. Term No. 764. William M. Barrett, as president of The Adams Express Company, &c., appellant, vs. The City of New York et al. Term No. 22,841. File No. 765. The City of New York et al., appellants, vs. William M. Barrett, as president of The Adams Express Company, &c. Filed August 19, 1911. File Nos. 22,840 & 22,841.

(22,842 and 22,843.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 766.

EDWARD T. PLATT, AS TREASURER OF THE UNITED STATES EXPRESS COMPANY, ETC., APPELLANT,

vs.

THE CITY OF NEW YORK ET AL.

No. 767.

THE CITY OF NEW YORK ET AL., APPELLANTS,

vs.

EDWARD T. PLATT, AS TREASURER OF THE UNITED STATES EXPRESS COMPANY, ETC.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 29, 1911.

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1

UNITED STATES OF AMERICA,
Second Circuit,
SOUTHERN DISTRICT OF NEW YORK. } ss.:

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND CIRCUIT. 2

TO THE HONORABLE THE JUDGES OF SAID COURT, IN CHANCERY, SITTING:

Your orator, Edward T. Platt, brings this his bill of complaint against the City of New York, the Mayor and Commonalty of the City of New York, William J. Gaynor, as Mayor of the City of New York, William J. Gaynor, James C. Cropsey, as Commissioner of Police of the City of New York, James C. Cropsey, Clement 3
J. Driscoll, as Deputy Commissioner and all other deputy commissioners, Max F. Smittberger, Chief Inspector and all other Inspectors, officers, members, agents and servants and employees of the Department of Police of the City of New York, Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and all agents or employees of said bureau and all officers, employees, agents and servants of the City of New York, respectfully presents and charges:

1. That your orator now is and for many years con- 4
tinuously last past has been a resident and citizen of the City of New York.

That your orator brings this bill of complaint as Treasurer of the United States Express Company and as a shareholder and member thereof, on behalf of himself and all members and shareholders of said Company. That the said United States Express Company is a voluntary unincorporated association or joint stock company organized under the common law of the State of New York and

5 is composed of more than fifteen hundred members or shareholders who own one hundred thousand equal shares or interests in said Company; that all said members have a joint ownership and interest in the cause of action hereinafter stated but that they are too numerous to be joined as parties hereto and it is impracticable, if not impossible, to bring them and each of them before this Honorable Court to join in this, your orator's said bill of complaint because they are widely scattered and live in different parts of more than fif-
6 teen states in the United States and that some of them are now temporarily beyond the seas, and your orator therefore, as such treasurer and member and shareholder of said Company brings this suit not only on his own behalf but also on behalf of said Company and each and every of its members.

That under the Articles of Association of said Express Company it is provided that said Company may sue and defend in the name of its Treasurer and by Statutes of the State of New York it is provided that
7 joint stock associations composed of more than seven members may sue and defend in the name of the Treasurer of such associations; that the said United States Express Company is such a joint stock association and is composed of more than seven members.

That the defendant, the City of New York, is and at all times hereinafter mentioned was a municipal corporation organized under the law of the State of New York and defendant William J. Gaynor is and since January 1st, 1910, has been mayor of said City and
8 the other defendants are and for some time have been officers of said City and acting as such officers in the said several capacities.

2. That the said Express Company has the right and power to engage and is engaged in, among other things forwarding for hire by express from various points in the United States including the City of New York in the State of New York, to various other points in the United States. That the said Express Company is engaged in the forwarding of commodities by express in, through, and within thirty-eight of the states

and territories of the United States and is engaged in interstate commerce within the meaning of Section 1 of the Act to Regulate Commerce and Acts amendatory thereof and supplementary thereto and under said Section 1 of said Act as amended it is required by the provision of said Section 1 of said Act as amended to provide and furnish transportation for such commodites upon reasonable request therefor.

3. That ever since the organization of said Express Company it has engaged in the business of forwarding for hire by express valuables and articles of merchandise as aforesaid and that one of its principal offices for receiving and delivering said valuables and articles of merchandise is in said City of New York and that it has had and now has, in its possession, and owns and controlls for the purpose of receiving and delivering merchandise in said City of New York more than 400 horses and 250 wagons, of the value largely in excess of $140,000.

4. That said Express Company has heretofore entered into many contracts and engagements and is now bound by said contracts and engagements to receive and transport for hire articles of value and merchandise delivered and to be delivered to it from various persons, partnerships and corporations engaged in the mercantile and other businesses in said City of New York, for delivery by it to persons, partnerships and corporations in other cities, towns and villages throughout the United States and foreign countries.

That the said Express Company has entered into and is bound by the terms of a contract with the United States Government, whereby it is bound to and does from time to time and from day to day receive, transport and deliver large shipments of currency between the United States Treasury in Washington City, in the District of Columbia, and New York City, in the State of New York, and other cities in the United States, of great value. In many instances the shipments exceed $1,000,000 each in value.

That the said Express Company has heretofore

entered into and is now entering into many contracts and engagements in many towns and villages, cities, states and countries outside the said State of New York, to deliver valuables and articles of merchandise to persons, partnerships and corporations located and doing business in said City of New York, and that such contracts and obligations so heretofore entered into amount in value each day to a sum largely in excess of $2,000.00.

That in carrying on and conducting its said business as aforesaid in the City of New York, it is necessary for said Express Company to and it does collect and receive from various banks, stores, manufactories, business establishments, express and railroad depots located in said City articles of value and merchandise, and deliver the same to railway and express depots, places of business, mercantile establishments and banks in said City of New York, and that in so doing said Express Company has now in its employ in and about the conduct and operation and protection of its said business over five hundred men, to whom it is paying wages of $2,000.00 per day.

5. The amount involved in this controversy, exclusive of interest and costs, largely exceeds the sum of $2,000.00.

6. That the said United States Express Company was organized and began business as aforesaid in or about the year 1854, and since said time has been continuously engaged in forwarding merchandise by express under the conditions aforesaid; that it has during said period operated within the City of New York, without special license from the city authorities of said City. That by Chap. 410, Sec. 86, of the Laws of New York for the year 1882, and the acts amendatory thereof, which said provisions is known as Sec. 51 of the Greater New York Charter, entitled, "Board of Aldermen; Licensing and Regulating certain trades or business; dog license," etc., the said Aldermen were authorized and empowered as follows:

"§ 51. Subject to the constitution and laws of the State, the Board of Aldermen shall have power to provide for the licensing and otherwise regulating the business of dirt carts, public cartmen, truckmen, hackmen, cabmen, expressmen, car drivers and boatmen; of bootblacks; of pawnbrokers, junk dealers, keepers of intelligence offices, dealers in second hand articles, hawkers, peddlers, vendors and scalpers in coal freights; of menageries, circuses and common shows; of boneboiling, fatrendering and other noxious businesses; and shall have power to regulate or forbid the keeping of dogs. The Board of Aldermen shall also have power to regulate the rates of fare to be taken by owners or drivers of hackney coaches, carriages, motors, automobiles or other vehicles, and to compel the owners thereof to pay annual license fees. All ordinances in relation to any of the matters mentioned in this section shall be general, shall provide for the enforcement thereof in the manner specified in Section 44 of this Act, as amended, and shall fix the license fee to be paid, if any. All licenses shall be according to an established form, and shall be regularly numbered and duly registered as shall be prescribed by the Board of Aldermen.

That thereafter and in or about 1899 the said Board of Aldermen did create a Bureau of Licenses, attached to the Mayor's office, for the purpose of issuing and recording all licenses authorized by resolution or ordinance of the Board of Aldermen, or now in force in any part of said City, and provided in reference thereto among other things as follows:

"Code of Ordinances of The City of New York.

Chapter 7.

Title 2.—The Granting and Regulation of Licenses:

Article 1. Business Requiring a License:

"Sec. 305. The following business must be duly licensed as herein provided, namely: public cartmen, truckmen, hackmen, cabmen, expressmen, drivers,

junk dealers, dealers in second hand articles, hawkers, peddlers, vendors, coal scalpers, common shows, shooting galleries and bowling alleys, billiard tables, dirt carts. exterior hoists and stands within stoop lines and under the stairs of the elevated railroad stations (Ordinance approved May 22, 1899, Section 1).

"§ 306. No person shall engage in or carry on any such business without a license therefor under a penalty of not less than $2.00, nor more than $25.00 for each offense, and for the purposes of this ordinance the term person shall include any human being or lawful association of such."

"ARTICLE 2.—LICENSES AND LICENSE FEES.

§ 307. All licenses shall be granted by authority of the Mayor and issued by the Bureau of Licenses for a term of one year from the date thereof, unless sooner suspended or revoked by the Mayor, and no person shall be licensed except a citizen of the United States, or one who has regularly declared intention to become a citizen.

The Mayor shall have power to suspend or revoke any license or permit issued under the provisions of this ordinance. The Mayor shall also have power to impose a fine of not more than $5.00 or less than $1.00 for any violation of the regulations herein provided, and to suspend the license pending payment of such fine, which when collected shall be paid into the Sinking Fund for the redemption of the City debt.

§ 308. The annual license fee shall be as below enumerated:

For each public cart or truck	$2.00
For each public hack coach	3.00
For each public hack cab	2.00
For each special hack coach	5.00
For each special hack cab	3.00
For each express wagon	5.00
For each junk shop or dealer	20.00
For each dealer in second-hand articles	25.00

For each junk cart or boat	$5.00	25
For each peddler using horse and wagon	8.00	
For each peddler using push cart	4.00	
For each peddler carrying merchandise	2.00	
For each coal scalper	250.00	
For each common show	25.00	
For each public shooting gallery	5.00	
For each public bowling alley	5.00	
For each public billiard table	3.00	
For each dirt cart	1.00	
For each general hoisting	25.00	26
For each special hoisting	1.00	
For each fruit or soda water stand or both	10.00	
For each newspaper or periodical stand or both, and in addition also fruit or soda water or both	15.00	
For each movable newspaper stand	1.00	
For each newspaper and periodical stand or both	5.00	
For each chair of a bootblack stand	5.00	
For each stand under elevated railroad stations	10.00	27
For each driver of any licensed vehicle	.50	

ARTICLE 3. SPECIAL REGULATIONS AND RATES.

2. Drivers of licensed Vehicles.

SECTION 315. Every person driving a licensed hack, or express, shall be licensed as such driver, and every application for such license shall be endorsed in writing by two reputable residents of the City of New 28
York, testifying to the competence of the applicant. No owner of a licensed hack or express shall employ an unlicensed driver under a penalty of $10.00 for each and every offense.

5. Expresses and Expressmen.

SECTION 330. Every vehicle of whatever construction kept or used for the conveyance of baggage, packages, parcels and other articles within or through the City of New York for pay, shall be deemed a public express, and the owner thereof shall be deemed a public ex-

29 pressman, and the term expressman shall be deemed to include any common carrier of baggage, packages, parcels or other articles within or through the City of New York.

SECTION 331. Every public express shall show on each outside thereof the word "Express," or the letters "Exp." together with the figures of its official number.

SECTION 332. Every owner of a public express shall give a bond to the City of New York for each and
30 every vehicle licensed in the sum of $100 with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express.

TITLE 3.—GENERAL REGULATIONS AND COMPLAINTS.

SECTION 373. All license fees received by the Bureau
31 of Licenses shall be regularly paid over to the City Treasury, except the license fees received from hack men, dealers in junk and second-hand articles, and stands within stoop lines, which shall be paid into the Sinking Funds for the redemption of the City debt.

(Ord. app. May 22, 1899).
(Section 56)

SECTION 374. The Mayor shall have power to appoint inspectors in the Bureau of Licenses to see that
32 the provisions of this ordinance are fully and properly complied with, and all licensed vehicles and places of business shall be regularly inspected, and the result of such inspection shall be endorsed on the official license therefor, together with the date of inspection, and the signature of the inspector and all inspections shall be regularly reported to the Bureau of Licenses (*Id.*, Section 57).

SECTION No. 375. Every licensee shall have an official license and exhibit the same upon the demand of any person, and shall report within three days to the

Bureau of Licenses any change of residence or place of business, and shall at times perform the public duties of the business licensed when called upon so to do, if not actually unable. (*Id.*, sec. 58.)

TITLE 4.—VIOLATIONS.

SECTION 579. Except as hereinbefore otherwise provided, no person shall violate any of the regulations of this ordinance under a penalty of ten dollars for each offense. No such violation shall be continued under a penalty of ten dollars, for each day so continued. Any person engaging in or carrying on any business herein regulated without a license therefor, or any person violating any of the regulations of this ordinance, upon conviction thereof by any Magistrate, either upon confession of the party of competent testimony, may be fined not more than ten dollars for each offense, and in default of payment of such fine may be committed to prison by such Magistrate until the same be paid; but such imprisonment shall not exceed ten days.

7.—That the City of New York has no authority to make such provisions applicable to wagons or drivers used in carrying on interstate commerce; that none of the said provisions does or can be valid or binding upon wagons and drivers used and employed in the conduct of interstate commerce; that the said provisions hereinbefore set forth or referred to have all at all times and continuously been construed by the authorities of said City of New York as being inapplicable to such wagons and drivers and have been so construed, held and regarded until after the beginning of the strike and its consequent acts of violence and lawlessness hereinafter referred to; that in or about the month of November, 1902, the said question was submitted by the Bureau of Licenses to the then Corporation Counsel of the City of New York for his opinion, and that he delivered his said opinion in writing upon said subject in reply to said inquiry, a

true copy of said opinion is hereto annexed, marked Exhibit A and made a part hereof.

8.—That your orator is informed and believes and therefore states it to be a fact, that on or about the day of November, 1910, William J. Gaynor, Mayor of the City of New York, did direct the Department of Police, through its proper officers, to enforce the said provisions with reference to the said wagons of the said Express Company, and to arrest and take into custody and deprive of their liberty the drivers of said wagons, and to enforce against said Express Company the provisions of said ordinance wherein it is provided that the business of said expressmen must be licensed and that the said police of the City of New York have arrested and deprived of his liberty one of said drivers of said wagons while so engaged and have threatened to and will unless enjoined by the order of this Honorable Court, arrest and take into custody and deprive of their liberty further drivers of said wagons and remove them from the wagons of the said Express Company operating in the City of New York and engaged in the forwarding of interstate shipments of express, and that the said defendants have seized and impounded many wagons while so engaged and have threatened to and will, unless enjoined by the order of this Honorable Court seize and impound the wagons of the said United States Express Company and withdraw them from service in the forwarding of interstate commerce by express to enforce the payment of the license tax on said wagons alleged by the said defendants to be due under the ordinances hereinbefore set forth; that on November 9th, 1910, and heretofore, the American Express Company applied for licenses for a number of its men and wagons at the Bureau of Licenses of the City of New York and said Licenses were unwarrantably delayed as follows: The defendant Francis V. S. Oliver, Chief of the Bureau of Licenses, his assistants, agents, and employes refused the license for said wagons before the same had been inspected, and thereupon detailed an inspector to inspect said

wagons; said Oliver, his assistants, and agents, further 41
stated that the applications for licenses for drivers could not be passed upon until letters had been written to each of the two persons required to certify that the applicant was "honest, industrious and competent" and until replies to said letters had been received, and it was further said that there were many thousands of applications pending prior to said applications for drivers' licenses filed by the American Express Company, which must be attended to in their order, and that as the Department had but 42
a few clerks it would take several weeks before said applications could be passed upon; that prior to the time of the present strike it was possible and customary for expressmen to obtain licenses for their wagons and drivers without delay.

9. Your orator further says that on the 22nd day of October, 1910, a small number of helpers made a demand upon its Agent for an increase in wages with a threat that they would immediately strike if such demand was not granted; that said agent was not author- 43
ized to pass upon such demands, and so informed said helpers, that they thereupon left their employ in the Company and that a great numbers of sympathizers and disorderly characters coerced by threats and violence a great portion of this company's employes to abandon their work through threats, violence and fear of personal injury, and that ever since said date your orator's business has been interrupted, disturbed, and to a great extent prevented by disorderly mobs of rioters in the streets of the said City of New York and the 44
City of Jersey City, New Jersey, and that its men have been assaulted; its property destroyed, and its business interrupted, and that it has been unable to transact any business whatsoever, except under protection either of armed men or of the police force.

10. Your orator further shows that by reason of the intimidation and violence of the said mobs and rioters most of its drivers have left the employ of the said express company and the said express company has been compelled to employ other drivers to take their

45 places, and notwithstanding, no demand had ever been made upon said express company or upon its former drivers for licenses, the officials of The City of New York have threatened to withdraw, and in certain instances have withdrawn police protection from the said wagons and drivers of the said express company while engaged in such interstate commerce upon the ground and because of the fact that the said wagons or drivers did not have licenses as now demanded by the City of New York under the pro-
46 visions of the said ordinances of the City of New York heretobefore set forth or referred to and have threatened to discriminate, and in certain instances have discriminated against the said wagons or drivers upon said ground and have demanded that such licenses shall be had as a condition precedent to the furnishing to said wagons and drivers of police protection.

11. That the said express company has entered into many large contracts to make deliveries in the said City of New York for large mercantile institutions and
47 other industries promptly and immediately upon the arrival of certain deliveries of express in said City, and that said express contracted to be delivered by said express company has arrived and is arriving in said City from day to day and will continue to arrive in said City from day to day, and much of said express is what is known and described as "perishable freight," and cannot be held by said express company in said depots, warehouses, storehouses, cars, or elsewhere, but must be promptly delivered to consignees thereof
48 in the said City of New York upon its arrival in said City; that there is now in the depots, warehouses and storehouses owned, controlled, leased, rented or operated by said express company many tons of said merchandise, to the value of many thousands of dollars; that said express company is endeavoring to make prompt deliveries of said express; that the said express company now is and for many years last passed has been duly authorized under the laws of the United States to carry goods in bond for immediate transportation between ports of entry designated in said laws,

including the said City of New York, and pursuant to such authorization it has transported and is daily transporting between said City of New York and said other ports of entry outside thereof, and also between said other ports of entry and through the City of New York by its wagons and teams aforesaid, goods in bond, for which said goods it is responsible to the United States and is under bond to the United States to safely carry and deliver same to the collector at the port of destination; that unless restrained by order of this Honorable Court they will seize the wagons and arrest the drivers of said express company and thereby prevent the said express company from making deliveries of and transporting said goods in and through the said City of New York by means of its wagons and teams aforesaid, and between the various depots and express terminals within and without the said City, in the manner and under the terms and conditions by the Statute of the United States in that behalf provided.

12. That as to all articles of value and merchandise received by the said express company from points outside of the City of New York consigned to various firms, partnerships and corporations hereinbefore specifically referred to, the charge so made by said express company covers delivery of such articles of value and merchandise to the respective places of business or residences of the consignees of the said articles by means of the wagons and teams of said express company hereinbefore referred to, and the charge made by said express company for the expressage of all goods received by it from the consignors in said City of New York consigned to points outside of the said City of New York, covers the transportation of said articles by means of wagons and teams of said company hereinbefore referred to, from the places of business or residences of said consignors or from the office of the said express company where same is received by said express company in the said City of New York to the freight or express depot in the said City of New York from which the same are transported in said City of New York to points of destination outside of the said

53 City, which carriage of the said articles of value and merchandise by the wagons and teams of the said express company hereinbefore referred to, is part of the continuous transportation of said articles of value and merchandise.

13. That if the said express company is further prevented from carrying on its said business of said defendants, as herein set forth, its said business will be further seriously crippled and injured; and its teams, wagons and employees will be compelled to
54 remain idle to the great loss and damage of the said company, which loss will arise from the following causes: Loss of profits, loss of trade in business, damages for non-performance of agreements, loss of customers who will sever their business relations with the said express company, and the payment of the fixed expense occasioned by the wrongful acts of said defendants herein set forth, amounting to more than two thousand dollars ($2,000.00), and

Forasmuch, therefore, as your orator is without rem-
55 edy in the premises, except in a court of equity, and to the end that said defendants heretofore named, and each and every one of the same, may full, true and perfect answer make to this your orator's bill of complaint, but not under oath, the answer under oath of each and every of said defendants being hereby expressly waived, and that said defendants and each of them and those employed by them and each and everyone of the servants and agents of said defendants, be restrained and enjoined from
56 demanding the said licenses and from seizing or otherwise interfering with, hindering, obstructing or stopping any of the wagons or business of said Express Company, in the maintenance, conduct, management or operation of any of its business in interstate commerce, or from carrying its drivers in the city of New York.

May it please your Honors to grant to your orator a temporary injunction pending final hearing of this case, whereby said defendants and each and every of the same, their agents and servants, or any or either of them, may thereby be ordered and commanded to

refrain and be thereby restrained and enjoined as hereinbefore prayed, and that an order may be entered herein directing that the said restraining order shall be enforced and be binding upon the said defendants and members, agents and employees thereof; and that same shall be binding upon each and all of the defendants named herein, from and after service of said order upon them, and each of them, by delivery to them, a copy thereof, or by reading a copy of same to them, or by posting same in such conspicuous places at the place of business of said Express Company, and upon the wagons owned or employed by it as aforesaid, or any other public place, in such manner and printed in such type that the same may be read by said defendants or any other person or persons coming near said wagons or public places as aforesaid, and that such order and each and every part thereof shall be severally binding upon all and each of the said defendants, and that your orator may have leave to take testimony before a Master in Chancery of this Court at any time after the filing of this bill of complaint.

And that upon final hearing said injunction be made perpetual.

May it please your Honors to grant to your orator a writ of subpœna of the United States of America, issued out of and under the seal of your Honorable Court directed to said defendants and each of them, returnable on a day certain therein named, as by law required, commanding that they and each of them appear and answer this, your orator's, bill of complaint, as hereinbefore set forth.

May your orator have such other and further relief as to equity and good conscience as may be proper in the premises.

And your orator will ever pray.

EDWARD T. PLATT.

By O'BRIEN, BOARDMAN, PLATT & LITTLETON,
His Solicitors.

WALKER D. HINES,
Counsel.

61 THE UNITED STATES OF AMERICA }
Southern District of New York } ss.

On this 10th day of November, 1910, before me personally appeared Edward T. Platt, the above named orator, who made solemn oath that he had read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that
62 as to those matters he believes it to be true.

Sworn to before me this 10th }
day of November, 1910. }

WILLIAM W. COLLIN, JR.,
(SEAL.) Notary Public,
New York County.

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Exhibit A.

MAYOR'S OFFICE,
Bureau of Licenses,
City Hall,
New York.

LAW DEPARTMENT,
Office of the Corporation Counsel. 66

NEW YORK, December 9, 1902.

GEORGE W. BROWN, JR., ESQ.,
Chief of the Bureau of Licenses.

SIR: I have your letter of November 6th, 1902, in which you ask to be advised in regard to certain questions relative to the licensing of public carts and express wagons.

You ask first if an expressman, having a place of business outside the City of New York and conveying 67 articles from that location to and delivering the same in the City of New York, and also collecting articles for conveyance and delivery outside thereof, requires an express license from the City of New York to do such business as is done therein.

You also ask if an expressman who is licensed elsewhere is exempt from the operation of the municipal ordinances requiring a license here, and cite as a specific example of the case of an expressman with a Jersey City license delivering packages in New York City, 68 or taking packages from New York City for delivery in Jersey City.

You also refer me to the case of the Long Island Express Company, which collects parcels and carries them to some destination beyond the limits of the city.

It is my opinion that the ordinances, Sections 18, 19 and 20, apply to an expressman having a place of business outside The City, and conveying articles

69 to a point within The City, or to a point beyond The City, providing he passes through the corporation.

Section 18 of the ordinances applies to all express vehicles which convey certain articles "within or through" The City.

It is not, in my opinion, necessary that the express business be confined entirely to the territory included within the City, and it is therefore my conclusion that the ordinances apply to the case of the Long Island Express Company. Although no specific charge is
70 imposed for the wagon service of that Company, as distinguished from the car service, a general charge is imposed by the Company for the collection and transportation of express packages, and it is to be presumed that that charge also includes the charge for transportation by wagon, as well as by rail.

In the case of the Jersey City expressman, my conclusion is different. It seems to me that the imposition of a license fee, and the prescription of rates, as far as they apply to an expressman who transports
71 packages or other articles from Jersey City, or from any other point without the State, to the City or through The City, would be an attempt to regulate interstate commerce, and would, therefore, be unauthorized. It has been decided by the Supreme Court of the United States, and by the Court of Appeals of this State, that in the case of interstate transportation the legislature cannot prescribe the charge to be made for even that part of the transportation which is to be performed within the State. Wabash R. R. Co. vs. Ill.,
72 118 U. S., 557. Peo. *ex rel.* Pa. R. R. Co. vs. Knight, 171 N. Y., p. 357.

You also wish to be advised as to whether a vehicle licensed as a public cart is prohibited from doing an express business, and whether a duly licensed express is prohibited from carrying articles which a public cart is allowed to carry.

Section 6, referring to the public carts and cartmen, defines a public cart as "a vehicle used to carry merchandise, household furniture, or other bulky articles"

and no provision is made to compel a public cartman to give a bond. An expressman, under Section 18 is permitted to carry packages, parcels and other articles, and the owner of the express wagon is compelled to give a bond. The distinction between a cartman and an expressman seems to be that an expressman is permitted to carry articles of every nature, whether light or bulky, and is compelled to give a bond, while a public cartman is permitted to carry only articles of a bulky nature, and no bond is required. I believe that an expressman may act as a cartman, but a cartman has no right to act as an expressman.

Respectfully yours,

(Signed) GEORGE L. RIVES,
Corporation Counsel.

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CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

EDWARD T. PLATT, as Treasurer of the United States Express Company, etc.,

Complainant,

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vs.

THE CITY OF NEW YORK, ET AL.,

Defendants.

Answer.
In Equity
No. 6-242.

The joint and several answers of the defendants herein, the City of New York, the Mayor and Commonalty of the City of New York, William J. Gaynor
79 as Mayor of the City of New York, William J. Gaynor, James C. Cropsey as Commissioner of Police of the City of New York, James C. Cropsey, Clement J. Driscoll as Deputy Commissioner and all other deputy commissioners, Max S. Smittberger Chief Inspector and all other inspectors, officers, members, agents, servants and employees of the Department of Police of the City of New York, Francis V. F. Oliver Chief of the Bureau of Licenses of the City of New York, and all agents or employees of said Bureau and all officers,
80 employees, agents and servants of the City of New York, to the bill of complaint herein:

The above named defendants now and at all times hereafter saving and reserving unto themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many uncertainties and insufficiencies in the said bill of complaint contained for answer thereto, or unto so much and such parts thereof as they are

advised is or are material or necessary to make answer unto, answering say: 81

FIRST: Defendants admit all of the allegations contained in paragraphs numbered 1, 2 and 3 of said bill of complaint herein, except that defendants have no knowledge as to the rights, duties and liabilities of said United States Express Company under the acts of Congress, and leave complainant to make such proof thereof as he may be advised.

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SECOND: Defendants have no knowledge as to any of the matters or things alleged in paragraph numbered 4 of said bill of complaint herein and leave complainant to make such proof thereof as he may be advised, except that defendants admit that in carrying on and conducting its said express business in the City of New York said United States Express Company does collect and receive from and deliver to various persons in the City of New York numerous packages and articles of value. 83

THIRD: Defendants admit that the amount involved in this controversy, exclusive of interest and costs, largely exceeds the sum of Two thousand dollars ($2,000).

FOURTH: Defendants admit that statutes and ordinances have been duly enacted by the State of New York and by the Board of Aldermen of the City of New York, respectively, as set forth in paragraph 84 numbered 6 of said bill of complaint herein, but defendants deny that said provisions as set forth in said bill of complaint herein, are a full and complete statement of all of the provisions of said statutes and ordinances applicable and relevant to the matter in controversy herein, a full, true and complete copy of the ordinances of the City of New York, so far as relevant to the matter in controversy herein, will be found in the 1910 edition of Cosby's Code of Ordinances, to which reference is made for greater certainty.

85 Defendants admit that prior to the institution of this suit said United States Express Company operated and employed drivers and wagons within said City of New York without first obtaining the licenses required by said ordinances of said city, but defendants aver that said acts on the part of said United States Express Company were in defiance of said statutes and ordinances hereinbefore referred to and were illegal and criminal acts.

86 FIFTH: Upon information and belief, defendants deny that the City of New York has no authority to make the provisions of said ordinances applicable to wagons or drivers used in carrying on interstate commerce within the city and denies that none of said provisions are valid or binding upon wagons or drivers used and employed in the conduct of interstate commerce within the city, but on the contrary defendants aver that said ordinances are valid local police regulations applicable to all persons within the City of New
87 York falling within their provisions. Defendants admit that a former Corporation Counsel of said City of New York rendered an opinion, a copy of which is attached to the bill and marked Exhibit "A", but defendants deny that the same is relevant or material to any matter in controversy in this suit. Save as herein expressly denied or admitted, defendants have no knowledge of any matter or thing alleged in said paragraph numbered 7 in said bill of complaint and ask that complainant be required to make full proof
88 thereof if the same is deemed material.

SIXTH: Defendants admit that heretofore the defendant William J. Gaynor as Mayor of the City of New York, directed the Department of Police to enforce the provisions of said ordinances relating to the wagons and drivers of said United States Express Company and of all other expressmen doing business within the city, in accordance with the terms of said ordinances, and that defendants purpose and intend to enforce said ordinances in the future. Defendants

admit that the police of said City of New York have arrested one or more drivers of express wagons for driving said wagons through the streets of said city without having first obtained the licenses required by said ordinances. But defendants deny that they have seized and impounded, or threatened to seize and impound, the wagons of said United States Express Company and withdraw them from service in the forwarding of interstate commerce by express in order to enforce the payment of a license tax on said wagons, or for any other purpose, and defendants deny that they purpose or intend so to do in the future, except that defendants intend to prevent the use of unlicensed express wagons within the city and if necessary to that end will remove said unlicensed wagons from the streets of the city to a place of safety until the same can be delivered to the owner thereof. Defendants deny that at the time of said strike referred to in said bill of complaint, or at any other time, the Bureau of Licenses, or any of the employees thereof, refused or delayed in any manner the issuance of licenses duly applied for in accordance with said ordinance. That on the contrary defendants aver that even during said strike licenses applied for were issued with great rapidity and that every effort was made by said Bureau of Licenses to expedite the issuance of said licenses. Defendants aver that now and at all times, licenses properly applied for, may be promptly obtained. Save as hereinabove specifically admitted, denied or otherwise stated, defendants have no knowledge of any of the matters or things alleged in said paragraph numbered 8 of said bill of complaint herein and leave the complainant to make such proof thereof as he may be advised.

SEVENTH: Defendants have no knowledge of any of the matters or things in paragraph numbered 9 of said bill of complaint herein and leave the complainant to make such proof thereof, is deemed material, as he may be advised.

93 EIGHTH: Defendants deny that at the time of said strike, referred to in the bill of complaint herein, or at any other time, the defendants withdrew or threatened to withdraw police protection to said United States Express Company, or its wagons or drivers, as alleged in paragraph numbered 10 of said bill of complaint herein. But defendants admit that they did refuse to furnish to said express company special police escorts to accompany unlicensed wagons and drivers through the streets of the city. Save as herein admitted or denied,
94 or otherwise stated, defendants have no knowledge as to any of the matters alleged in paragraph numbered 10 of said bill of complaint herein and leave the complainant to make such proof, thereof, if deemed material, as he may be advised.

NINTH: Defendants have no knowledge of any of the matters or things alleged in paragraph numbered 11 of said bill of complaint herein and leave the complainant to make such proof thereof
95 as he may be advised, except that they deny that they purpose to, and unless restrained by the order of the court that they will prevent said company from making deliveries of and transporting goods in and through the City of New York. But defendants admit that they purpose and intend to enforce said ordinances in a lawful and orderly manner as hereinbefore stated.

TENTH: Defendants have no knowledge of any of the
96 matters or things alleged in paragraph numbered 12 of said bill of complaint and leave the complainant to make such proof thereof as he may be advised, if deemed material.

ELEVENTH: Defendants deny that they have prevented said United States Express Company from carrying on its said business in the City of New York, or that its said business has been or will be in any way crippled or injured by these defendants, or any of them, or that said United States Express Company

has suffered or will suffer any loss or damage by reason of any acts or threatened acts of these defendants and especially that said United States Express Company has been or will be injured or damaged in the manner alleged in paragraph numbered 13 of said bill of complaint herein.

TWELFTH: Defendants deny that they, or either of them, have in any way trespassed upon the rights of complainant, as alleged in said bill of complaint herein, or otherwise, and deny that complainant is entitled to any relief whatever, or any part of the relief in said bill of complaint demanded, all of which matters and things these defendants are ready and willing to prove as this Honorable Court shall direct and these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ARCHIBALD R. WATSON,
Corporation Counsel,
Solicitor for defendants,
Hall of Records,
Borough of Manhattan,
New York City.

(Signed)
WILLIAM B. HALE,
Counsel for defendants,
40 Wall Street,
New York, N. Y.

UNITED STATES OF AMERICA,
State of New York,
CITY AND COUNTY OF NEW YORK, } ss.:

JAMES C. CROPSEY being duly sworn, deposes and says: I am one of the defendants above named. I have read the foregoing answer and know the contents thereof, and the same is true of my own knowledge

except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

(Signed) JAMES C. CROPSEY.

Subscribed and sworn before me on this 4th day of January, 1911.

SAMUEL P. DU BOIS,
Notary Public,
Queens Co.
Cer. Filed.
Reg. No. 2164. N. Y. Co.

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UNITED STATES CIRCUIT COURT,

Southern District of New York.

Edward T. Platt, as Treasurer of the United States Express Company, &c.,

Complainant,

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against

The City of New York, The Mayor and Commonalty of the City of New York, William J. Gaynor, James C. Cropsey, as Commissioner of Police of the City of New York, James C. Cropsey, Clement J. Driscoll, as Deputy Commissioner, and all other Deputy Commissioners, Max F. Schmittberger, Chief Inspector, and all other inspectors, officers, members, agents, servants and employees of the Department of Police of The City of New York, Francis V. F. Oliver, Chief of Bureau of Licenses of The City of New York, and all agents and employees of said Bureau, and all officers, employees, agents and servants of The City of New York,

Defendants.

Replication. In Equity. No. 6-242.

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This replicant, Edward T. Platt, as Treasurer of the United States Express Company, individually and as a shareholder in said Company, suing upon behalf of himself and all other members or shareholders of said

Company, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto sayeth that he does and will ever maintain and prove his said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly as in and by his said bill he has already prayed.

O'Brien, Boardman, Platt & Littleton,
Solicitors for Complainant.

(Sgd.) Walker D. Hines,
Counsel for Complainant, 52 William Street,
New York City, N. Y.

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CIRCUIT COURT OF THE UNITED STATES.

SOUTHERN DISTRICT OF NEW YORK.

EDWARD T. PLATT, as Treasurer of the United States Express Company, &c., Complainant, AGAINST THE CITY OF NEW YORK, ET AL., Defendants.	Stipulation. In Equity. No. 6-242.

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For the purposes of this cause only, it is hereby stipulated as follows:

The United States Express Company (hereinafter referred to as the "Express Company") carries on its business as an express company over railroads extending through the States of New Jersey, Pennsylvania, New York, Ohio, Indiana, Illinois, Missouri, Kansas, Nebraska, Colorado, South Dakota, Minnesota, Iowa, Wisconsin, Michigan, Delaware, Maryland, Virginia, West Virginia, Tennessee, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma and Texas; the Territory of New Mexico; the District of Columbia; and the Province of Ontario, Canada. The mileage of the railroads so served by the Express Company aggregates over 32,000 miles and includes no railroads in or adjacent to the State of New York except the Central Railroad of New Jersey, the Eastern terminus of which is at Communipaw, New Jersey, the Lehigh Valley Railroad, the Eastern terminus of which is at Jersey City, New Jersey, and the Delaware, Lackawanna & Western Railroad, the Eastern terminus of which is at Hoboken, New Jersey. The Express Company's Eastern rail termini are at the Central Railroad of New Jersey terminal at Communipaw, the

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Lehigh Valley Railroad terminal at Jersey City, and the Delaware, Lackawanna & Western Railroad terminal at Hoboken, New Jersey, respectively. All express matter carried by the Express Company between New York City and points west of New York City is carried by its express wagons between New York City and Communipaw, or Jersey City, or Hoboken, as the case may be, such wagons crossing the Hudson River on ferry boats, and the Express Company has no arrangements or connection which will admit of such express matter being carried in any other way.

About three-tenths of one per cent. of the total business done by the Express Company in the conduct of its express business in New York City consists of shipments carried by it between points in New York City (*i. e.*, between points on Staten Island, in the Borough of Richmond, without going out of the State).

About one and two-tenths of the total business done by the Express Company in the conduct of its express business in New York City consists of shipments carried in its wagons by it between points in the Borough of Richmond and points in other Boroughs of New York City. All such shipments are carried on ferry boats between the Borough of Richmond and the Borough of Manhattan, and said ferry boats pass out of the State of New York through the waters of the State of New Jersey in their transit between said Boroughs of Manhattan and Richmond.

A small but substantial part of the total business handled by the Express Company in the conduct of its express business in New York City represents shipments carried by it between New York City and other points in the State of New York, all of which are carried by the Express Company across the Hudson River between New York City and Jersey City in its wagons as aforesaid and then over the Delaware, Lackawanna and Western Railroad or the Lehigh Valley Railroad through the States of New Jersey and Pennsylvania; and the Express Company has no arrangements or connections which

will admit of such traffic being carried in any other way. 121

All the Express Company's business as an Express Company in New York City other than that referred to in the last three preceding paragraphs consists of the transportation of articles, each of which is received by the Express Company for shipment at a point in one State or a foreign country and is carried by the Express Company to a point of destination in another State or foreign country. A portion of the business mentioned in this paragraph consists of the transportation of goods carried daily by the Express Company pursuant to the laws of the United States in bond from one port of entry to another, for all of which goods the Express Company is under bond to the United States to carry safely and deliver to the Collector of the Port at destination. Another portion of the business mentioned in this paragraph consists of transportation, under contract with the United States, of large shipments of currency of great value in each direction between the United States Treasury in Washington City in the District of Columbia and New York City, in the State of New York and other cities in the United States; in many instances such shipments of currency exceed $1,000,000 each in value. All of the shipments mentioned in this paragraph are carried by the Express Company in its wagons across the Hudson River between New York City, New York, and Jersey City, New Jersey. 122 123

For the conduct of its aforesaid business in New York City the Express Company has 276 two-horse express wagons, and 67 one-horse express wagons, of which 189 are stabled in and operated exclusively from Jersey City, 123 are stabled in and operated exclusively from Communipaw, and 31 are stabled in and operated in the Borough of Manhattan. But all of said wagons are operated indiscriminately in the handling of the Express Company's interstate, foreign and local traffic in the manner hereinbefore stated. 124

The Express Company has never taken out from the authorities of the City of New York any licenses

125 for its express wagons or for the drivers thereof, but during many years has operated substantially the number of wagons above set forth.

The facts above set forth are true at the present time, and have been true for many years past and at all times since the filing of the bill herein.

Except as so far as otherwise hereinbefore specifically stipulated, the facts in this cause are substantially the same as the facts in the suit now pending in this Court of William M. Barrett, as President of
126 Adams Express Company, &c., complainant, against City of New York, *et al.*, defendants; and a copy of the testimony and other evidence taken and stipulations made before the Examiner in said last mentioned suit shall be filed herein and treated as pertinent to this cause as fully as if said evidence had been taken and said stipulations had been made in this cause and had related expressly to the United States Express Company, instead of to the Adams Express Company.

This cause shall be heard and determined upon this
127 stipulation and upon the testimony and other evidence and stipulations in said last mentioned suit, and no further evidence shall be taken herein.

Dated March 17th, 1911.

O'BRIEN, BOARDMAN, PLATT & LITTLETON,
Solicitors for Complainant.

ARCHIBALD R. WATSON,
Solicitor for Defendants.

WILLIAM B. HALE,
Counsel for Defendant.

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CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK,

EDWARD T. PLATT, as Treasurer of the United States Express Company, &c.,

Complainant,

AGAINST

THE CITY OF NEW YORK, ET AL.,

Defendants.

Stipulation.

In Equity No. 6-242.

130

It is hereby stipulated that only the pleadings and the stipulation of March 17, 1911, and this stipulation need be printed in this cause; and that, to the extent provided in said stipulation of March 17, 1911, the 131
parties may use in this court, without reprinting, the testimony and other evidence and stipulations in the suit of William M. Barrett, as President of the Adams Express Company, etc. v. The City of New York, *et al.* as already printed in said suit, and that an order to this effect may be entered without further notice.

Dated New York, March 18, 1911.

O'BRIEN, BOARDMAN, PLATT & LITTLETON,
Solicitors for Complainant.

ARCHIBALD R. WATSON, 132
Per H.,
Solicitor for Defendants.

Opinion.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Complainant,

vs.

THE CITY OF NEW YORK and Others, Defendants.

EDWARD T. PLATT, as Treasurer of the United States Express Company, Complainant,

vs.

THE CITY OF NEW YORK and Others, Defendants.

WELLS, FARGO & COMPANY, Complainant,

vs.

THE CITY OF NEW YORK and Others, Defendants.

This cause comes here upon final hearing of bill in equity to restrain the enforcement of certain ordinances passed by the Board of Aldermen of the City of New York.

Opinion.

LACOMBE, *C. J.*:

These ordinances were fully discussed in the opinion filed in disposing of the motions for preliminary injunction in these three suits. 183 F. R., 793. Much testimony has been taken but it merely establishes by competent proof what the court assumed to be the facts when the former decision was made. Neither the new proofs nor the exhaustive briefs which are now presented have induced the court to reach a different conclusion upon the main features of the case from that already expressed.

It may be taken for granted that when the group of ordinances contained in Chapter 7 were enacted,—if they were enacted as a single piece of legislation, which we may assume to have been the fact—the Board of Aldermen had primarily in mind the licensing and otherwise regulating certain specified businesses included in the enumeration of Sec. 51 of the Greater New York Charter. It is difficult to see how any one can read the first two sections without reaching this conclusion. Sec. 305 provides that "the following businesses must be duly licensed, as herein provided;" and Sec. 306 provides that "no person shall engage in or carry on any such business without a license thereof," under certain specified penalties.

"Expressmen" are included in the enumeration of Sec. 305, but it is abundantly settled by authority that a person engaged in conducting an interstate express cannot be required by the local or state authorities to take out a local license as a prerequisite to conducting such interstate business in such locality.

Complainant, therefore, is entitled to an injunction restraining defendants from taking any action to enforce complainant's compliance with the provisions of these two ordinances.

Incidentally as part of the local legislation embodied in this chapter of the ordinances, regulations as to the use of the streets were adopted. They provide, among other things, that wagons used in express business shall be licensed and marked with the word "express" and their official numbers and shall be regularly inspected by city inspectors, a license fee of $5 being charged for each wagon. It is further provided that the drivers of each of such wagons shall be licensed upon certificate as to competency, shall exhibit their official licenses on demand and shall report any change of residence to the Bureau of Licenses. A license fee of fifty cents is required for each driver. The court has no doubt that it was within the power of the Board of Aldermen to prescribe such regulations, and believing these provisions to be clearly separable from those which regulate generally the doing of an express business (Willcox v. Consolidated Gas Co.), must decline to interfere with their enforcement for reasons sufficiently set forth in the former opinion. The amount of license fee charged is so small that it may fairly be considered merely as providing for the cost of oversight and inspection.

It is also thought that the provision (Sec. 322) requiring a bond to be given for each licensed vehicle in the penal sum of $100 conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles is a legitimate exercise of the police power, which is not — be condemned because it affects interstate commerce.

When the cause was considered on the application for preliminary injunction the use of automobiles by one of these express companies was not discussed. It now appears that the Adams Express Company operates upwards of 90 automobiles; the drivers of these are chauffeurs. The state has itself taken charge of the regulation of these high power machines in public thoroughfares; the vehicles themselves and the chauffeurs are licensed by the state. Chapter 374 of the Laws of 1910 provides that "local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner or chauffeur, to whom this article is applicable, any tax, fee, license or permit for the use of the public highways, or excluding any such owner or chauffeur from the free use of such public highways * * *, and no ordinance, rule or regulation contrary to, or in any wise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect."

These express company automobiles and chauffeurs have been duly licensed by the state. It is not quite clear whether or not defendants are seeking to require additional licenses for such vehicles and drivers to be taken out under the ordinances; but, if they are doing so injunction may issue covering all such vehicles and drivers as hold state licenses.

Let a decree be entered in accordance with the views above expressed.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of Adams Express Co.,
v.
THE CITY OF NEW YORK and Others.

EDWARD T. PLATT, as Treasurer of United States Express Co.,
v.
THE CITY OF NEW YORK and Others.

WELLS, FARGO & COMPANY
v.
THE CITY OF NEW YORK and Others.

These are three suits, brought each by a separate express company to restrain the City of New York and various public officers therein from seeking to compel the Complainants and their drivers to take out licenses and pay license fees under certain ordinances of the City of New York, on the ground that complainant companies and their drivers are engaged in interstate commerce as common carriers regulated by the Interstate Commerce Act. The situation of each company is substantially the same as that of the others, and the discussion of the cases will be simplified if it be confined to the facts shown in the case first above entitled. The ordinances in controversy will be found in Chapter 7, Titles 1, 2, 3, and 4 of the Code of Ordinances of the City of New York. (Edition 1910): such of them as are germain to the issues here involved are referred to in the opinion and the full text of the more important sections is reproduced either in the opinion or in a foot-note.

LACOMBE, *C. J.*:

The fairness and conciseness with which the questions at issue have been presented on the briefs, and the frankness with which each side has conceded what is the result of reported decisions bearing upon the general subject-matter of the discussion has greatly lightened the labor of the court, and has made it unnecessary to undertake any extended review of those authorities: practically there is no dispute as to the law of the case.

The express company takes packages of merchandise coming from other states at some railroad or steamer terminal and transports them by its wagons through the streets and avenues to the addresses of the several consignees. It also collects similar packages addressed to consignees in other states, from shippers here and in like manner transports them to such terminals to be forwarded to their respective addresses. It is conceded that the local part of this transportation is an incident of the entire transportation and that such transportation is interstate commerce. The company also transports to and from points within this city packages not coming from or addressed to points without this state. It is conceded that so much of its business is not interstate commerce.

The amount of this domestic business is relatively very small, averaging less than one per cent. of its interstate business; with the interstate business only is this court concerned and in this discussion it will be assumed preliminarily at least that there is no intrastate business to be considered.

Not only is the local transportation of interstate packages interstate commerce, and so within the exclusive jurisdiction of the Federal Government, but that Government has actually taken control and regulated such business by express detailed provisions and by giving to the Interstate Commerce Commission very broad powers of regulation. See the Interstate Commerce Act as amended June 29th, 1906, and June 18th, 1910.

In the course of conducting such business, it is necessary for the express company to make use of the public streets, as a thoroughfare for the passage of the wagons it propels under guidance of its drivers, such wagons becoming a part of the traffic in those streets. That the local authorities have full power, under reasonable regulations, to regulate such traffic is not disputed. The Greater New York Charter, Section 50 grants to the Board of Aldermen power to regulate by general ordinances the use of the streets and sidewalks by foot passengers, animals and vehicles, to regulate the speed of vehicles; to make all such regulations in reference to the running of stages, trucks and cars as may be necessary for the convenient use and accommodation of the streets, etc., etc.

It is conceded by Complainants that the circumstance that their wagons, when using the public streets, are engaged in interstate commerce does not make them immune from the operation of such general ordinances, even though the exigencies of traffic in a congested centre of population may induce a very liberal interpretation of this grant of power. The local authorities may find it necessary not only to adopt and enforce "rules of the road," but also to prescribe regulations as to size and weight of vehicles, as to the details of their construction (such as tire width relative to weight), as to their motive power, as to identifying marks and numbers, as to the qualifications of their drivers, as to registration and licensing of vehicles and drivers, as to inspection and oversight. There is no reason and the court knows of no authority which will exempt the instruments of interstate commerce from regulations of this sort, adopted for the public safety and convenience, with which other vehicles not engaged in such commerce must comply. It is a legitimate exercise of the police power reserved to the States. Complainants make no contention to the contrary; indeed they fully concede the proposition above set forth. It is understood further, that they concede that such fees or charges as may be ratably imposed on all in order to provide the machinery necessary to carry out such regulations cannot fairly be regarded as a tax on interstate commerce, any more than would be the tolls upon a turnpike.

On the other hand, it is conceded by counsel for the defendants that whatever authority may be given by law to the local legislature to regulate business generally or to regulate the business of certain specified classes of persons, qua business, is inoperative to control a person engaged in interstate commerce, whose business is already

regulated by federal law, since the business of such person is within the exclusive jurisdiction of Congress.

With these concessions in mind we may now turn to the specific ordinances in controversy. The Greater New York Charter, Section 51, provides:

"SEC. 51. Subject to the constitution and laws of the State, the board of aldermen shall have power to provide for the licensing and otherwise regulating the business of dirt carts, public cartmen, truckmen, hackmen, cabmen, expressmen, car-drivers and boatmen; of boot-blacks, of pawnbrokers, junk-dealers, keepers of intelligence offices, dealers in second-hand articles, hawkers, peddlers, vendors and scalpers in coal freights; of menageries, circuses and common shows; of bone boiling, fat rendering, and other noxious businesses; and shall have power to regulate or forbid the keeping of dogs. The board of aldermen shall also have power to regulate the rates of fares to be taken by owners or drivers of hackney coaches, carriages, motors, automobiles or other vehicles, and to compel the owners thereof to pay annual license fees. All ordinances in relation to any of the matters mentioned in this section shall be general, shall provide for the enforcement thereof in the manner specified in section '44' of this act as amended, and shall fix the license fees to be paid, if any. All licenses shall be according to an established form, and shall be regularly numbered and duly registered as shall be prescribed by the board of aldermen."

The Code of Ordinances contains a group of provisions apparently framed under the authority conferred by this section, dealing with the granting and regulation of licenses, and being Chapter 7 of such Code.

A Bureau of Licenses is established and organized, (Title 1, secs. 300-304), it being provided that all licenses issued by such bureau shall show, among other things, the "privileges allowed." It is next provided in sec. 305 that: "The following businesses must be duly licensed as herein provided, namely, public cartmen, truckmen, hackmen, cabmen, expressmen, drivers, junk dealers, dealers in second-hand articles, hawkers, peddlers, vendors, ticket speculators, coal scalpers, common shows, shooting galleries, bowling alleys, billiard tables, dirt carts, exterior hoists and stands within stoop lines and under the elevated railroad stations." A penalty of not less than $2, nor more than $25, for each offense is imposed upon any person "who shall engage in or carry on any such business without a license therefor," sec. 306. The term of the license and its suspension or revocation are provided for in sec. 307, and the amount of annual license fees is provided in Sec. 308 (printed in foot-note infra) a separate fee is charged for each cart, hack, or express wagon, which is a convenient method of making the tax imposed conform to the amount of business done, there being in like manner a separate fee charged for each table in a billiard room and for each chair in a boot-black stand. Renewals of licenses are provided for in sec. 309.

The next article, 3 (sec. 310-360) deals with special regulations and rates. Under the first three subdivisions sec. 310-329 are

grouped "Public Carts and Cartmen" and "Public Hacks and Hackmen." A "public cart" is defined by sec. 310 as "Every vehicle of whatever construction, drawn by animal power or propelled by other motive power, which shall be kept for hire or used to carry merchandise, household furniture, or other bulky articles within the City of New York for pay." The owner thereof is declared to be a "public cartman." There is no separate provision in the Code for "truckmen," enumerated in sec. 51 of the Charter and in sec. 306 of the Ordinances: evidently it was assumed that there was no real distinction to be drawn between a cart and a truck. It is provided that every public cart shall show on each outside thereof identifying marks and an official number (sec. 311); and that the amount to be charged for loading, transportation and unloading may be agreed upon in advance, and such contract shall control (sec. 312). The legal rates "for moving household furniture," unless otherwise mutually agreed are prescribed in sec. 313 (printed in the footnote); but there seems to be no prescribed rates for articles not properly "household furniture." To secure payment of his "legal rate of transportation," a public cartman is given a lien, and provision made as to enforcing it (sec. 314).

Sec. 315 provides that: "Every person driving a licensed hack or express, other than the person named in the license therefor, shall be licensed as such driver, and every application for such license shall be indorsed, in writing, by two reputable residents of The City of New York, certifying to the competence of the applicant."

Subdivision 3 and 4 (sec. 316-329) regulate "Public Hacks and Hackmen," the word "hacks" including "cabs" and "coaches" for transporting persons, and the term "hackmen" including owner or driver, or both (sec. 316). There are provisions as to backstands and the use thereof. The legal rates of fare for cabs and coaches, both mileage and hourly, are specifically fixed, with right to exact payment in advance. We find provisions for marking and numbering the vehicles, for the disposition of property lost or left therein, and for the settlement of disputes as to the lawful rate of fare, where no agreement has been made.

Sec. 325 provides that "All vehicles for hire shall be licensed, and the owner thereof shall pay the sum of two dollars with his original application as the license fee for each and every vehicle so kept for hire and one dollar for each vehicle for annual renewals." It is difficult to see to what "vehicles for hire" this can apply, in view of the specific provisions as to "public carts," "public hacks" and "public expresses" found elsewhere in the Chapter. Possibly it may apply to vehicles supplied to customers by livery stables.

Subdivision 4*a*. (sec. 329*a* to 329*k*) deals with Public Porters, requiring licenses and the wearing of a badge, and regulating the manner in which they shall conduct their business, and the rates they may charge.

Subdivision 5 deals with Expresses and Expressmen. It reads as follows:

SEC. 330. Every vehicle of whatever construction kept or used for the conveyance of baggage, packages, parcels and other articles

within or through The City of New York for pay, shall be deemed a public express, and the owner thereof shall be deemed a public expressman, and the term expressman shall be deemed to include any common carrier of baggage packages, parcels or other articles within or through The City of New York.

SEC. 331. Every public express shall show on each outside thereof the word "Express," or the letters "Exp.," together with the figures of its official number.

SEC. 332. Every owner of a public express shall give a bond to The City of New York for each and every vehicle licensed in a penal sum of $100 with sufficient surety, approved by the Mayor or Chief of the Bureau of Licenses, conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles or things entrusted to the owner or driver of any such licensed express.

SEC. 333. The legal rates for regular deliveries, unless otherwise mutually agreed, shall be as follows in the city:

Between points within any borough:	
Not more than five miles apart, each piece	$0.40
Not more than ten miles apart, each piece	.55
Not more than fifteen miles apart, each piece	.75

Between points in different boroughs: One-half the above rates in addition.

Special deliveries at rates to be mutually agreed upon.

In Subdivisions 6 to 16 (secs. 334-359) are found provisions regulating in more or less detail the following businesses: Junk Dealers, Dealers in Second-Hand Articles, Peddlers, Ticket Speculators, Coal Scalpers, Common Shows, Shooting Galleries, Bowling Alleys, Billiard Tables, Dirt Carts and Cartmen and exterior hoists. Article 4 deals with stands within the Stoop Lines and under Elevated Railroad Stations.

Title 3 (Sec-. 373-378) deals with General Regulations and Complaints, License fees received from hackmen, dealers in junk and second-hand articles and for stands within stoop-lines are to be paid into the Sinking Fund and all other license fees into the City Treasury. All licensed vehicles and places of business shall be regularly inspected. Sec. 374 (printed in the foot-note). Licenses must be exhibited on demand; the identifying marks prescribed for licensed vehicles are to be permanently and conspicuously affixed; fines of not more than $5 may be imposed by the Chief of the Bureau of Licenses. Further penalties for violation of the regulations are provided in section 379, printed in the foot-note. A few preliminary points which have been raised may be first disposed of. It has been suggested that the form, arrangement and language of the group of ordinances above cited indicate that the Board of Aldermen which passed them was undertaking to exercise the power conferred by section 51, and was not acting under section 50 of the Charter. This may be so, but it is not material to enquire into the mental processes of the members of a past and gone legislative body. If some one or more of its enactments are such as it had authority to

pass under some specific grant of power, it will not fail because it was voted for under the supposition that authority was given under some different grant of power, not broad enough to warrant such enactment.

It is shown that for years past and with these ordinances in the Code the express company has not (until just prior to the bringing of this suit) been required to take out licenses for the conduct of its interstate business, or to employ only licensed drivers for its wagons engaged in interstate commerce, or to conform to any tariff charges prescribed, nor has there ever been any inspection of its premises or vehicles.

It has, however, taken out licenses for wagons and drivers engaged in conducting its intrastate business. This indicates a practical construction of the ordinances in consonance with complainants' interpretation of them, which might help to turn the scales in a doubtful case but which certainly cannot control, if some particular ordinance is found to be valid and applicable.

This discussion is much simplified by the manner in which it comes up. The application is for a preliminary injunction. Such relief is not granted unless it is apparent that some irreparable damage to the complainant will result if is postponed till final hearing. As to nearly all the provisions complained of no such damage is shown. The amounts of license fees prescribed for wagons and drivers may be paid under protest, without inconvenience, and no irreparable damage will result from filing the bonds required; no harm will result from marking the wagons with their license numbers, or from allowing the city officials to inspect premises or vehicles. No attempt has been made to regulate the rates to be charged and collected for transportation of interstate packages, nor is any such attempt threatened. The defendants concede that where such rates are not disapproved by the Interstate Commerce Commission the City authorities have nothing to do with them.

It does appear, however, that if the provisions requiring all express wagons to be driven only by drivers licensed as required by sec. 315 are enforced, the ability of the express company to discharge its duties as a common carrier engaged in interstate commerce may be seriously interfered with. A determination, therefore, of the questions raised as to this section is appropriate at this stage of the case.

That section requires that the drivers of certain vehicles therein specified must be licensed, which is calculated to ensure their identification, and that their application for license must be accompanied by a certificate in writing by two reputable residents "to the competence of the applicant," which to some extent—however slight—would tend to secure more careful drivers. If this ordinance were enacted under sec. 50 of the Charter and by its terms applied to all persons driving vehicles in the streets Complainants, on their own statement, would not be here asserting immunity from its provisions. As we have seen it makes no difference under which section of the Charter the Board of Aldermen undertook to act; if the ordinance is such as they were authorized to enact under any section, and they

have enacted it, it will stand. The only question is whether the particular ordinance is so special that it must fall, either because it is not a "general ordinance" which alone are authorized by sec. 50, or because it makes discriminations not to be tolerated under the Fourteenth Amendment to the Constitution of the United States.

Obviously the ordinance is not of universal application; it does not require the drivers of all vehicles to be licensed after a certification as to competency. No doubt it would be a great boon to pedestrians who have to use the streets if such a measure of protection against reckless driving were secured to them, but this ordinance does not go to any such length. It deals only with a relatively small class of drivers. As we have seen the only carts which are required to be licensed are those used by their owners to transport the goods of other persons for pay (sec. 310). Inasmuch as all licensed vehicles are required to be conspicuously marked, a few hours' walk through the business thoroughfares of the city will give some idea of the relatively small number of vehicles which are within the terms of the ordinances. All carts and trucks used by wholesale dealers, by building contractors, breweries, department stores and in a host of other employments—some of them of larger size and a greater menace than any operated by public cartmen or expressmen—are wholly without the purview of this ordinance.

It may be that the class covered by this ordinance is still further restricted. The ordinance is limited in terms to "every person driving a licensed hack or express." By definition (Sec-. 310-316) the "public cartmen" whose vehicles must be licensed *is* operating neither a hack nor an express, so that sec. 315 does not require the person driving his vehicle to be licensed. Sec. 308 provides that the annual license fee for each driver of any licensed vehicle shall be fifty cents; but that may fairly be construed as prescribing only the amount which shall be paid by drivers who are required to be licensed; what drivers shall be licensed being provided for elsewhere. If this construction be correct, the only drivers of carts for the conveyance of goods who are required to be licensed are those who drive express wagons; the drivers of the public carts of "public cartmen" are immune. Such a construction, however, is somewhat doubtful, and since no such interpretation is contended for by the complainants, it will be assumed for the purposes of this case that sec. 315 requires licensed drivers for all public hacks and for all carts or wagons whose owners carry articles owned by others for pay.

This class which includes the truckmen, cartmen, expressmen and hackmen, is apparently a small one, relatively to the total traffic in the streets; but it is not a class arbitrarily constituted, the line of cleavage between it and the residue of the traffic carried on by owners of the vehicles transporting their property and persons is a natural one. It is quite conceivable that some good reason may be shown for a separate classification; it is suggested on defendant's brief that the drivers of the one class are readily differentiated from those of the other classes by the circumstance that they name the charges for service to customers, collect the amounts due and may contract in some instances for special rates. However this may be

the federal courts are not astute to find improper classification where the state has undertaken, in the exercise of its police power, to differentiate between different classes. There must be a very clear showing of inequality, (as in Yick Wo v. Hopkins, 118 U. S. 356) to warrant their interposition. In the case at bar this court is not now prepared to hold that the discrimination between the drivers provided for in sec. 315 and all other drivers is so arbitrary as to require the condemnation of the section under the Fourteenth Amendment. As to the suggestion that Chap. 50 of the Charter forbids the passage of special ordinances, it is sufficient to say that an ordinance covering all instances of a certain class may be a "general" one although it may not be universally applicable to all classes.

It is further suggested that the section should be condemned because it leaves the question, who shall be licensed, to the arbitrary and unqualified discretion of the Mayor, who may revoke any driver's license at his own will, without assigning any reasons for such action, sec. 307. A similar objection was raised before this court in Engel v. O'Malley (opinion filed Aug. 31, 1910, not yet reported). There a statute was criticized because it apparently confided the issuing of a license to the arbitrary discretion of the State Comptroller. Of this criticism it was said: "it is sufficient to say that the terms (of the Statute) may be construed either way; that is, as giving such officer the power capriciously to refuse a license, or as giving him the power to refuse only in the honest exercise of a reasonable discretion. In the absence of a decision by the State Court of last resort construing the language of the Statute, it must be assumed that the latter is the correct interpretation, because otherwise the act would be unconstitutional and it must be assumed that the legislature intended to keep its enactments within the limits fixed by the Constitution."

The motions are denied.

Foot-Note.

The following sections of the Ordinances, which are cited in the foregoing opinion, are printed in full in this foot-note, for convenience of reference:

"Sec. 308. The annual license fees shall be as below enumerated:

For each public cart or truck	$2.00
For each public hack coach	3.00
For each public hack cab	2.00
For each special hack coach	5.00
For each special hack cab	3.00
For each express wagon	5.00
For each junk shop or dealer	20.00
For each dealer in second-hand articles	25.00
For each junk cart or boat	5.00
For each peddler using horse and wagon	8.00
For each peddler using push cart	4.00
For each peddler carrying merchandise	2.00

For each ticket speculator	50.00
For each coal scalper	250.00
For each common show	25.00
For each public shooting gallery	5.00
For each public bowling alley	5.00
For each public billiard table	3.00
For each dirt cart	1.00
For each general hoisting	25.00
For each special hoisting	1.00
For each fruit or soda water stand, or both	10.00
For each newspaper or periodical stand, or both, and in addition also fruit or soda water, or both	15.00
For each movable newsaper stand	1.00
For each newspaper and periodical stand, or both	5.00
For each chair of a bootblack stand	5.00
For each stand under elevated railroad stations	10.00
For each driver of any licensed vehicle	0.50

SEC. 313. The legal rates for moving household furniture, unless otherwise mutually agreed, shall be as follows:

For a single truck load, within two miles	$2.00
For every additional truck load, within two miles	0.50
For loading, and unloading and housing to ground floor	.50
For each flight of stairs, up or down	.25
For double truck load, within two miles	3.00
For every additional mile or part thereof	1.00
For loading, unloading and housing to ground floor	.50
For every flight of stairs, up or down	.50

SEC. 374. The mayor shall have power to appoint inspectors in the Bureau of Licenses to see that the provisions of this ordinance are fully and properly complied with; and all licensed vehicles and places of business shall be regularly inspected, and the result of such inspection shall be indorsed on the official license therefor, together with the date of inspection and the signature of the inspector, and all inspections shall be regularly reported to the Bureau of Licenses.

SEC. 379. Except as hereinbefore otherwise provided, no person shall violate any of the regulations of this ordinance under a penalty of not less than two dollars or more than ten dollars for each offense. No such violation shall be continued under a penalty of one dollar for each day so continued. Any person engaging in or carrying on any business herein regulated without a license therefor, or any person violating any of the regulations of this ordinance, shall be deemed guilty of a misdemeanor, and upon conviction thereof by any magistrate, either upon confession of the party or competent testimony, may be fined not more than two dollars ($2) for each offense, and in default of payment of such fine may be committed to prison by such magistrate until the same be paid; but such imprisonment shall not exceed ten days."

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Dec. 22, 1910. John A. Shields, Clerk.

United States Circuit Court, Southern District of New York.

WILLIAM M. BARRETT, as President of the Adams Express Company, Complainant,

vs.

THE CITY OF NEW YORK and Others, Defendants.

EDWARD T. PLATT, as Treasurer of the United States Express Company, Complainant,

vs.

THE SAME, Defendant.

WELLS, FARGO & COMPANY, Complainant,

v.

THE SAME, Defendant.

This cause comes here upon final hearing of bill in equity to restrain the enforcement of certain ordinances passed by the Board of Aldermen of the City of New York.

LACOMBE, *C. J.*:

These ordinances were fully discussed in the opinion filed in disposing of the motions for preliminary injunction in these three suits. 183 F. R. 793. Much testimony has been taken but it merely establishes by competent proof what the court assumed to be the facts when the former decision was made. Neither the new proof nor the exhaustive briefs which are now presented have induced the court to reach a different conclusion upon the main features of the case from that already expressed.

It may be taken for granted that when the group of Ordinances contained in Chapter 7 were enacted.—if they were enacted as a single piece of legislation, which we may assume to have been the fact—the Board of Aldermen had primarily in mind the licensing and otherwise regulating certain specified businesses included in the enumeration of Sec. 51 of the Greater New York Charter. It is difficult to see how any one can read the first two sections without reaching this conclusion. Sec. 305 provides that "the following businesses must be duly licensed, as herein provided;" and Sec. 306 provides that "no person shall engage in or carry on any such business without a license thereof" under certain specified penalties.

"Expressmen" are included in the enumeration of Sec. 305, but it is abundantly settled by authority that a person engaged in conducting an interstate express cannot be required by the local or state authorities to take out a local license as a prerequisite to conducting such interstate business in such locality.

Complainant, therefore, is entitled to an injunction restraining defendants from taking any action to enforce complainant's compliance with the provisions of these two ordinances.

Incidentally as part of the local legislation embodied in this chapter of the Ordinances, regulations as to the use of the streets were adopted. They provide, among other things, that wagons used in express business shall be licensed and marked with the word "express" and their official numbers and shall be regularly inspected by city inspectors, a license fee of $5. being charged for each wagon. It is further provided that the drivers of each of such wagons shall be licensed upon certificate as to competency, shall exhibit their official licenses on demand and shall report any change of residence to the Bureau of Licenses. A license fee of fifty cents is required for each driver. The Court has no doubt that it was within the power of the Board of Aldermen to prescribe such regulations, and believing these provisions to be clearly separable from those which regulate generally the doing of an express business (Willcox v. Consolidated Gas Co.) must decline to interfere with their enforcement for reasons sufficiently set forth in the former opinion. The amount of license fee charged is so small that it may fairly be considered merely as providing for the cost of oversight and inspection.

It is also thought that the provision (Sec. 322) requiring a bond to be given for each licensed vehicle in the penal sum of $100. conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles is a legitimate exercise of the police power, which is not to be condemned because it affects interstate commerce.

When the cause was considered on the application for preliminary injunction the use of automobiles by one of these express companies was not discussed. It now appears that the Adams Express Company operates upwards of 90 automobiles; the drivers of these are chauffeurs. The state has itself taken charge of the regulation of these high-powered machines in public thoroughfares; the vehicles themselves and the chauffeurs are licensed by the State. Chapter 374 of the Laws of 1910 provides that "local authorities shall have no power to pass, enforce or maintain any ordinance, rule or regulation requiring from any owner or chauffeur, to whom this article is applicable, any tax, fee, license or permit for the use of the public highways, or excluding any such owner or chauffeur from the free use of such public highways—and no ordinance, rule or regulation contrary to, or in any wise inconsistent with the provisions of this article, now in force or hereafter enacted, shall have any effect."

These express company automobiles and chauffeurs have been duly licensed by the State. It is not quite clear whether or not defendants are seeking to require additional licenses for such vehicles and drivers to be taken out under the ordinances; but, if they are doing so injunction may issue covering all such vehicles and drivers as hold state licenses.

Let a decree be entered in accordance with the views above expressed.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Jun- 20, 1911. John A. Shields, Clerk.

At a Stated Term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Judicial Circuit, Held at the United States Court Rooms in the Borough of Manhattan, on the 29 Day of June, 1911.

Present:

Hon. E. H. Lacombe, Circuit Judge.

EDWARD T. PLATT, as Treasurer of the United States Express Company, as a Shareholder and Member Thereof, Suing on Behalf of Himself and All Members and Shareholders of said Company, Complainant,

v.

THE CITY OF NEW YORK, THE MAYOR AND COMMONALTY OF THE City of New York, William J. Gaynor, as Mayor of the City of New York; William J. Gaynor; James C. Cropsy, as Commissioner of Police of the City of New York; James C. Cropsy; Clement J. Driscoll, as Deputy Commissioner, and All Other Deputy Commissioners; Max F. Smittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, and Servants and Employees of the Department of Police of the City of New York; Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and All Agents or Employees of said Bureau, and All Officers, Employees, Agents, and Servants of the City of New York, Defendants.

Final Decree.

This cause having come on for final hearing upon the bill of complaint, the answer thereto, the replication, and the proofs oral and documentary duly taken and filed herein,

Now, therefore, upon consideration thereof, and after hearing Walker D. Hines, of counsel for Complainant, in support of the bill, and William B. Hale, of counsel for defendants, in opposition thereto, and due deliberation having been had, it is

Ordered, adjudged and decreed:

First. That Sections 305 and 306 of Chapter 7 of the Code of Ordinances of the City of New York are inoperative and void as an interference with interstate commerce, so far as they purport to require complainant herein to take out a local license as a prerequisite to conducting its interstate express business in the City of New York, and that a writ of injunction issue herein perpetually enjoining and restraining the defendants herein, and each of them, from taking any action to compel complainant to take out such a license under said sections.

Second. That Sections 308, 315, 330, 331, 332, 374, 375 and 376 of Chapter 7 of the Code of Ordinances of the State of New York, so far as they provide that wagons used in the express business shall be licensed and marked with the word "Express," or the letters "Exp.," together with their official number, and shall be regularly inspected by city inspectors, and that a license fee of

Five Dollars ($5) shall be paid for each wagon, and that the drivers of each of said wagons shall be licensed upon a certificate as to competency, and shall exhibit their official licenses on demand, and report any change of residence to the Bureau of Licenses, and that a license fee of Fifty (50) cents shall be paid for each driver, and that a bond shall be given for each licensed vehicle in the penal sum of One Hundred Dollars ($100) conditioned for the safe and prompt delivery of all baggage, packages, parcels and other articles entrusted to the owner or driver of said licensed vehicles, are valid enactments and not an unlawful interference with interstate commerce, and that an injunction restraining the enforcement of said sections of said ordinance against the complainant be, and the same is hereby, denied.

Third. That said city ordinances so far as they require automobiles used in the express business, and the drivers or chauffeurs thereof, to be licensed are inconsistent with and superseded by Chapter 374 of the Laws of 1910 of the State of New York, and that a writ of injunction issue herein perpetually enjoining and restraining defendants, and each of them, from in any manner requiring additional licenses to be taken out under said ordinances for such express automobiles and chauffeurs as hold licenses from the State of New York.

Fourth. That no costs be recovered by either party as against the other.

Enter:

E. HENRY LACOMBE,
Circuit Judge.

(Endorsed:) Copy Received Jun- 24, 1911. Cravath, Henderson & de Gersdorff, Attorneys for Complainant. U. S. Circuit Court. Filed Jun- 30, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

Equity. 6–242.

EDWARD T. PLATT, as Treasurer of the United States Express Company, an Unincorporated Association of More Than Seven Members, Organized and Existing under the Laws of the State of New York, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, Individually and as Mayor of the City of New York; James C. Cropsey, Individually and as Commissioner of Police of the City of New York; Clement J. Driscoll, as Deputy Commissioner; Max F. Schmittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, Servants, and Employees of the Department of Police of Police of the City of New York; Francis V. S. Oliver, Chief of the Bureau of Licenses of The City of New York, and All Agents or Employees of said Bureau, and All Officials, Members, Agents, and Servants of The City of New York, Defendants.

Petition for Allowance of Appeal.

Now comes the complainant above-named by O'Brien, Boardman & Platt, his solicitors, and prays for the allowance of an appeal to the Supreme Court of the United States from so much and such part and from each and every part of the final decree of this Court made herein on the 29th day of June, 1911, and entered on the 30th day of June, 1911, as denies him the relief prayed for in the bill of complaint filed herein, for the reasons specified in his assignment of errors which is filed herewith; and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be presented to the Supreme Court of the United States.

Dated, New York, July 29, 1911.

O'BRIEN, BOARDMAN & PLATT,
Solicitors for Complainant.

WALKER D. HINES,
Of Counsel.

The foregoing petition for appeal is allowed.
Dated, New York, August 3rd, 1911.

H. G. WARD,
Circuit Judge.

(Endorsed:) Due and timely service of a copy of the within is hereby admitted. Dated New York, Aug. 3rd, 1911. A. R. Watson and W. B. Hall, Solicitors for Defendants.—U. S. Circuit Court, Southern District N. Y. Filed Aug. 3, 1911. John A Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

Equity. No. 6-242.

EDWARD T. PLATT, as Treasurer of the United States Express Company, an Unincorporated Association of More Than Seven Members, Organized and Existing under the Laws of the State of New York, Complainant,

against

THE CITY OF NEW YORK, WILLIAM J. GAYNOR, Individually and as Mayor of the City of New York; James C. Cropsey, Individually and as Commissioner of Police of the City of New York; Clement J. Driscoll, as Deputy Commissioner; Max F. Schmittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, Servants, and Employees of the Department of Police of the City of New York; Francis V. S. Oliver, Chief of the Bureau of Licenses of The City of New York, and All Agents or Employees of said Bureau, and All Officials, Members, Agents, and Servants of The City of New York, Defendants.

Assignment of Errors.

Now comes the above named complainant by O'Brien, Boardman & Platt, his solicitors, and files the following assignment of errors upon which he will rely upon his appeal from the final decree herein entered in the office of the Clerk of this court on the 30th day of June, 1911.

First. The court erred in denying the complainant a perpetual injunction restraining the enforcement of sections 308, 315, 330, 331, 332, 374, 375 and 376 of Chapter 7 of the Code of Ordinances of the City of New York.

Second. The court erred in refusing to hold that said sections of the ordinance when construed in connection with the other sections of the ordinance do not apply to Express Companies doing an interstate business except to the extent that said Express Companies perform a strictly local service in New York City and its immediate vicinity.

Third. The court erred in refusing to hold that said sections of the ordinance if construed to apply to Express Companies doing an interstate business except to the extent that the said Express Companies perform a strictly local service in New York City and its immediate vicinity, are not authorized by section 51 of the Charter of The City of New York.

Fourth. The court erred in refusing to hold that said sections of the ordinance as applied to Express Companies doing an interstate business are unconstitutional and void as an interference with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Fifth. The court erred in holding that said sections of the ordinance are severable from sections 305 and 306 of the same chapter

of the said Code of Ordinances of The City of New York which it held unconstitutional and void as an attempt to regulate and interfere with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Sixth. The court erred in refusing to hold that so much of section 379 of the Code of Ordinances of The City of New York as provides that any person engaging in or carrying on the Express business without a license therefor shall be guilty of a misdemeanor, is as applied to express companies doing an interstate business unconstitutional and void as an interference with interstate commerce in volation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Seventh. The court erred in refusing to hold that sections 305, 306, 307, 308, 315, 330, 331, 332, 333, 373, 374, 375, 376, 378 and 379 of Chapter 7 of the Code of Ordinances of the City of New York as applied to express companies doing an interstate business constitute a single and inseparable scheme of municipal legislation, whereby it is sought to regulate and interfere with the interstate business of the express companies, and as such are wholly unconstitutional and void because an interference with interstate commerce in violation of the provisions contained in section 8 of Article I of the Constitution of the United States.

Eighth. The court erred in refusing to hold that sections 308, 315 and 374 of Chapter 7 of the Code of Ordinances of The City of New York constitute an arbitrary and unlawful discrimination against express companies, deny to them the equal protection of the laws and deprive them of their property without due process of law in violation of the provisions contained in the Fourteenth Article of Amendment to the Constitution of the United States.

Wherefore complainant prays that said decree of the Circuit Court in so far as it denies the complainant an injunction restraining the enforcement of the aforesaid sections of the Code of Ordinances of The City of New York be reversed.

Dated, New York, July 29, 1911.

O'BRIEN, BOARDMAN & PLATT,
Solicitors for Complainant.

WALKER D. HINES, *Counsel.*

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Aug. 3, 1911. John A. Shields, Clerk.

Bond.

NOTE.—On August 3, 1911, the Complainant filed a bond in the sum of $250.00 for damages and costs on appeal and said Bond was approved by Judge Ward.

THE UNITED STATES OF AMERICA, *ss:*

To The City of New York, William J. Gaynor, Individually and as Mayor of the City of New York, James C. Cropsey, Individually and as Commissioner of Police of The City of New York; Clement J. Driscoll, as Deputy Commissioner; Max F. Schmittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, Servants and Employees of the Department of Police of The City of New York; Francis V. S. Oliver, Chief of the Bureau of Licenses of The City of New York, and All Agents or Employees of said Bureau, and All Officials, members, Agents and Servants of The City of New York, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden in the City of Washington, District of Columbia, on the 28th day of August, 1911, next, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Southern District of New York, and filed in the Clerk's office of said court on the 3rd day of August, 1911, in a cause wherein Edward T. Platt, as Treasurer of the United States Express Company, an unincorporated association of more than seven members, organized and existing under the Laws of the State of New York, is the appellant, and you are the appellees, to show cause, if any there be, why the decree in so far as rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 3rd day of August, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-sixth.

H. G. WARD,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[Endorsed:] Eq. 6/242. E. & A. D. 3290. Circuit Court of the United States for the Southern District of New York. Edward T. Platt, as Treasurer, etc., Complainant, against The City of New York et al., Defendants. Citation on Appeal. O'Brien, Boardman & Platt, Solicitors of Complainant, Attorneys for —— ——, Office and Post-Affice Address, Two Rector Street, New York City. Due and timely service of a copy of the within is hereby admitted. Dated New York, August 3rd, 1911. A. R. Watson and W. B. Hale, Sols. & Counsel for D'f'ts, Solicitor- for defendants. U. S. Circuit Court, Southern District, N. Y. Filed Aug. 3, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

EDWARD T. PLATT, as Treasurer of the United States Express Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK, THE MAYOR AND COMMONALTY OF THE City of New York, William J. Gaynor, as Mayor of the City of New York; William J. Gaynor; James C. Cropsey, as Commissioner of Police of the City of New York; James C. Cropsey; Clement J. Driscoll, as Deputy Commissioner, and All Other Deputy Commissioners; Max F. Smittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, and Servants and Employees of the Department of Police of the City of New York; Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and All Agents or Employees of said Bureau, and All Officers, Employees, Agents, and Servants of the City of New York, Defendants.

Petition for Appeal and Allowance Thereof.

The above named defendants conceiving themselves aggrieved by the final decree herein, dated the 29th day of June, 1911, and entered in the office of the clerk of said court on the 30th day of June, 1911, in the above entitled cause hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and pray that their said appeal may be allowed and that the bond on appeal presented herewith may be approved and that a citation issue, directed to the above named complainant, commanding him to be and appear before the said Supreme Court of the United States upon the return day thereof, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be transmitted to said Supreme Court of the United States and that upon the filing of said appeal bond all further proceedings in this court be suspended until the determination of said appeal by said Supreme Court of the United States, to the end that said decree of this court may be reversed and such decree made as to said Supreme Court of the United States may seem just.

Dated, New York, August 3rd, 1911.

WILLIAM B. HALE,
Counsel for Defendants-Appellants,
40 Wall Street, New York, N. Y.

Appeal allowed and ordered accordingly.
Dated, New York, August 3, 1911.

H. G. WARD,
Circuit Judge.

(Endorsed:) Service of the within Petition and Allowance is hereby admitted. Dated New York, Aug. 3rd, 1911. O'Brien, Boardman & Platt, Solicitors for Compl't.—U. S. Circuit Court, Southern District N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

Circuit Court of the United States for the Southern District of New York.

EDWARD T. PLATT, as Treasurer of the United States Express Company, Suing on Behalf of Himself and All Other Members and Shareholders of said Company, Complainant,

against

THE CITY OF NEW YORK. THE MAYOR AND COMMONALTY OF THE City of New York, William J. Gaynor, as Mayor of the City of New York; William J. Gaynor; James C. Cropsey, as Commissioner of Police of the City of New York; James C. Cropsey; Clement J. Driscoll, as Deputy Commissioner, and All Other Deputy Commissioners; Max F. Smittberger, Chief Inspector, and All Other Inspectors, Officers, Members, Agents, and Servants and Employees of the Department of Police of the City of New York; Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and All Agents or Employees of said Bureau, and All Officers, Employees, Agents, and Servants of the City of New York, Defendants.

Assignment of Errors.

Now come the above named defendants and appellants herein and say that in the record and proceedings of said court herein, and in the decree made herein and dated the 29th day of June, 1911, and entered in the office of the clerk of said court on the 30th day of June, 1911, there is manifest error in this, to-wit:

First. That the court erred in finding and decreeing that Sections 305 and 306 of Chapter 7 of the Code of Ordinances of the City of New York are inoperative and void as an interference with interstate commerce to any extent, and in enjoining the defendants herein from taking any action to compel complainant to take out a license under said sections, instead of construing said sections in connection with the other sections of the same ordinance, held valid by the court, and as so construed upholding said Sections 305 and 306 as valid and constitutional enactments.

Second. That the court erred in construing said ordinances as purporting to require of the complainant a local license as a pre-requisite to conducting an interstate express business in the City of New York.

Third. That the court erred in granting an injunction restraining defendants from compelling complainant to take out a local license as a pre-requisite to conducting an interstate express business in the City of New York, because it appears without contradic-

tion that defendants have never attempted or threatened to require such a license and claim no right to require such a license.

Fourth. That the court erred in holding and decreeing that said Code of Ordinances of the City of New York so far as they require automobiles used in the express business, and the drivers or chauffeurs thereof to be licensed, are inconsistent with and superseded by Chapter 374 of the Laws of 1910 of the State of New York, and in granting an injunction restraining defendants from in any manner requiring additional licenses to be taken out under said ordinances for such express automobiles and chauffeurs as hold licenses from the State of New York.

Fifth. That the court erred in granting any relief against the defendants.

Sixth. That the court erred in not dismissing the bill of complaint for want of equity.

Seventh. That the court erred in not dismissing the bill of complaint upon the merits, with costs.

Wherefore, defendants and appellants pray that the said decree of the said Circuit Court of the United States for the Southern District of New York, for the errors aforesaid, be reversed and that the said court be instructed to enter a decree dismissing the bill of complaint herein upon the merits and for such other relief as may be just.

Dated, New York, August 3rd, 1911.

WILLIAM B. HALE,
Counsel for Defendants-App'l'ts,
40 *Wall Street, New York, N. Y.*

(Endorsed:) Service of the within Assignment of Errors is hereby admitted. Dated New York, Aug. 3rd, 1911. O'Brien, Boardman & Platt, Solicitors for Compl't.—U. S. Circuit Court, Southern District N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

Bond.

NOTE.—On August 4, 1911, the Defendants filed a Bond in the sum of $250.00 for damages and costs on appeal and said Bond was approved by Judge Ward.

THE UNITED STATES OF AMERICA, *ss:*

To Edward T. Platt, as Treasurer of the United States Express Company, suing on behalf of himself and all other members and shareholders of said company, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be held in the City of Washington, District of Columbia, on the 28th day of August, 1911, next, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Southern District of New York, and filed in the Clerk's office of said Court on the 3rd day of August, in a

cause wherein the City of New York, and Mayor and Commonalty of the City of New York, William J. Gaynor, as Mayor of the City of New York, William J. Gaynor, James C. Cropsey, as Commissioner of Police of the City of New York, James C. Cropsey, Clement J. Driscoll, as Deputy Commissioner and all other deputy commissioners, Max F. Smittberger, Chief Inspector and all other Inspectors, officers, members, agents and servants and employees of the Department of Police of the City of New York, Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and all agents or employees of said bureau, and all officers, employees, agents and servants of the City of New York, are the appellants, and you are the appellee, to show cause, if any there be, why the decree in so far as rendered against the said appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 3rd day of August, in the Year of our Lord, One thousand nine hundred and eleven, and of the independence of the United States the One hundred and thirty-sixth.

H. G. WARD,
Circuit Judge for the Southern District of New York.

[Endorsed:] Eq. 6/242. Circuit Court of the United States for the Southern District of New York. Edward T. Platt, as Treasurer of United States Express Company, etc., Complainant, against The City of New York et als., Defendants. Citation on appeal. William B. Hale, Counsel for D'f'd'nts-App'l'nts, 40 Wall Street, Borough of Manhattan, New York City. Due and timely service of a copy of the within is hereby admitted this 3rd day of August, 1911. Service of the within Citation is hereby admitted. Dated, New York, Aug. 3rd, 1911. O'Brien, Boardman & Platt, Solicitors for Compl't. U. S. Circuit Court, Southern District, N. Y. Filed Aug. 4, 1911. John A. Shields, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify, that the foregoing pages, numbered from one to seventy-nine inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled, Edward T. Platt, as Treasurer of the United States Express Company, an unincorporated association of more than seven members, organized and existing under the Laws of the State of New York, Complainant-Appellant, against The City of New York, William J. Gaynor, individually and as Mayor of the City of New York, James C. Cropsey, individually and as Commissioner of Police of the City of New York, Clement J. Driscoll, as Deputy Commissioner, Max F. Schmittberger, Chief Inspector, and all other in-

spectors, officers, members, agents, servants and employees of the Department of Police of the City of New York, Francis V. S. Oliver, Chief of the Bureau of Licenses of The City of New York, and all agents or employees of said Bureau, and all officials, members, agents and servants of The City of New York, Defendants-Appellees, and Edward T. Platt, as Treasurer of United States Express Company, suing on behalf of himself and all other members and shareholders of said Company, Complainant-Appellee, against The City of New York, The Mayor and Commonalty of the City of New York, William J. Gaynor, as Mayor of the City of New York, William J. Gaynor, James C. Cropsey, as Commissioner of Police of the City of New York, James C. Cropsey, Clement J. Driscoll, as Deputy Commissioner and all other Deputy Commissioners, Max F. Schmittberger, Chief Inspector and all other Inspectors, Officers, members, agents and servants and employees of the Department of Police of the City of New York Francis V. F. Oliver, Chief of the Bureau of Licenses of the City of New York, and all agents or employees of said bureau and all officers, employees, agents and servants of the City of New York, Defendants-Appellants, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 14th day of August, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the said United States the One Hundred and Thirty-sixth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk*.

[Endorsed:] United States Supreme Court. Edward T. Platt, as Treasurer of the United States Express Company, etc., Compl't-Appellant, vs. The City of New York et al., Def'ts-Appellants. Edward T. Platt, as Treasurer of *of* United States Express Co., etc., Compl't-Appellee, vs. The City of New York et al., Def'ts-Appellants. Transcript of Record. Appeal from the Circuit Court of the United States for the Southern District of New York.

Endorsed on cover: File No. 22,842. S. New York C. C. U. S. Term No. 766. Edward T. Platt, as treasurer of the United States Express Company, &c., appellant, vs. The City of New York et al. File No. 22,843. Term No. 767. The City of New York et al., appellants, vs. Edward T. Platt, as treasurer of the United States Express Company, &c. Filed August 19, 1911. File Nos. 22,842 & 22,843.